


SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

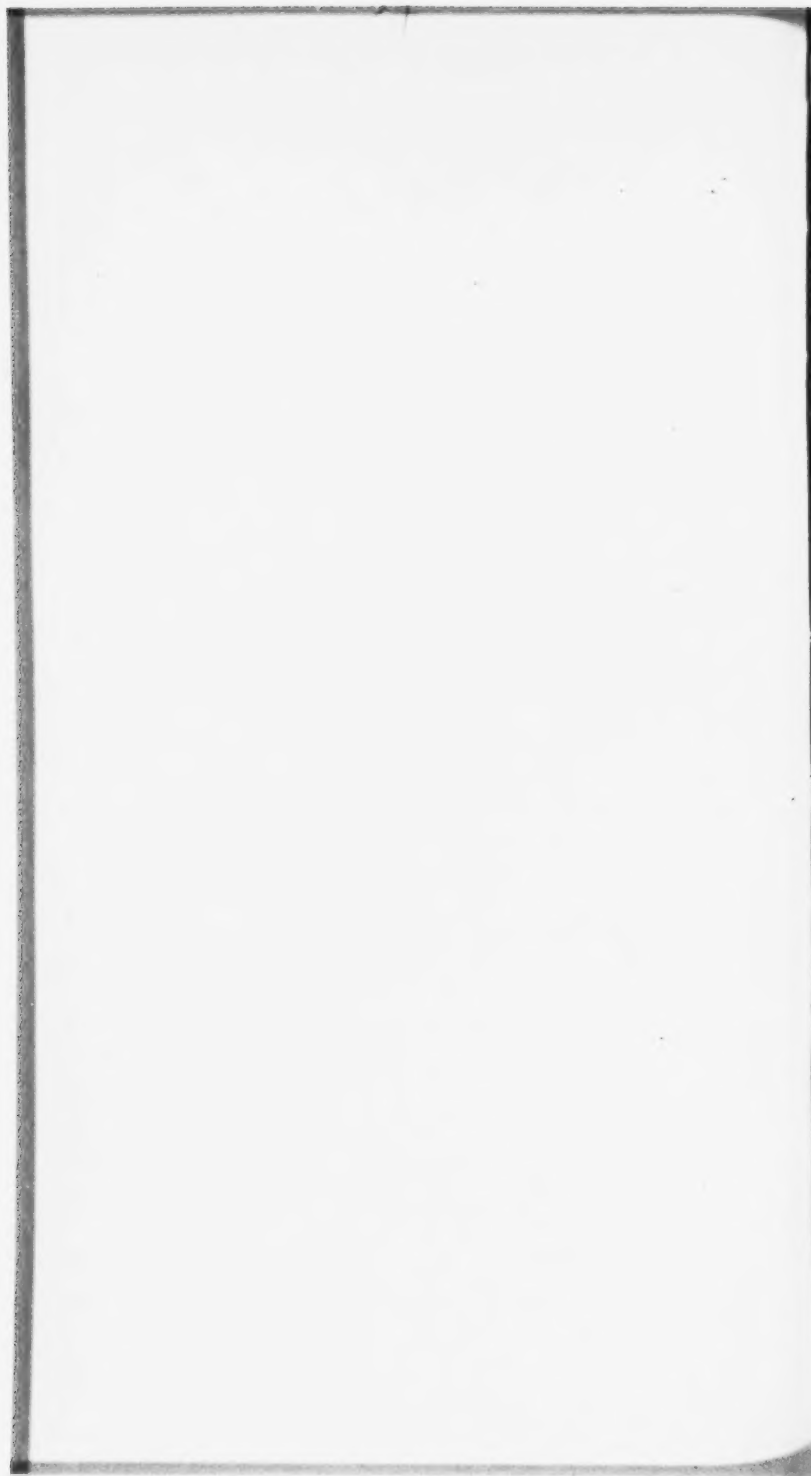
No.  , Original.

EX PARTE: IN THE MATTER OF THE STATE OF
OKLAHOMA, By CHARLES N. HASKELL, Gov-
ERNOR, PETITIONER.

**PETITION FOR WRIT OF PROHIBITION TO THE
CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF OKLAHOMA.**

FRED S. CALDWELL,
Attorney for Petitioner.

JOSEPH W. BAILEY,
Of Counsel.



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. , Original.

THE STATE OF OKLAHOMA, ONE OF THE UNITED STATES OF AMERICA, BY CHARLES N. HASKELL, GOVERNOR AND SUPREME EXECUTIVE OFFICER THEREOF, PETITIONER,

vs.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA AND RALPH E. CAMPBELL, THE DISTRICT JUDGE OF SAID DISTRICT, SITTING AS JUDGE OF SAID CIRCUIT COURT, RESPONDENTS.

PETITION FOR WRIT OF PROHIBITION.

To the Honorable Melville W. Fuller, Chief Justice of the United States, and the Honorable Associate Justices of the Supreme Court of the United States:

The petition of The State of Oklahoma, one of the United States of America, by Charles N. Haskell, its governor, su-

preme executive officer and chief magistrate, respectfully shows:

I.

That on the 16th day of November, 1907, pursuant to an act of Congress approved on the 16th day of June, 1906 (chapter 3335, U. S. Stats., 1905-6, part 1, p. 267), and entitled:

"An act to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States,"

petitioner was created and admitted into the Union, by proclamation of the President of the United States, on an equal footing with all other States of said Union; that said section 3 of said act of Congress of June 16, 1906, commonly called the "Enabling Act," contains, among other things, the following:

"And said convention shall provide in said constitution—

* * * * *

Second. That the manufacture, sale, barter, giving away, or otherwise furnishing, except as herein-after provided, of intoxicating liquors within those parts of said State now known as the Indian Territory and the Osage Indian Reservation and within any other parts of said State which existed as Indian reservations on the first day of January, nineteen hundred and six, is prohibited for a period of twenty-one years from the date of the admission of said State into the Union, and thereafter until the people

of said State shall otherwise provide by amendment of said constitution and proper State legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale, and wine, contrary to the provisions of this section, or who shall, within the above-described portions of said State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from other parts of said State into the portions hereinbefore described, shall be punished, on conviction thereof, by fine not less than fifty dollars, and by imprisonment not less than thirty days for each offense: *Provided*, That the legislature may provide by law for one agency under the supervision of said State in each incorporated town of not less than two thousand population in the portions of said State hereinbefore described; and if there be no incorporated town of two thousand population in any county in said portions of said State, such county shall be entitled to have one such agency, for the sale of such liquors for medicinal purposes; and for the sale, for industrial purposes, of alcohol which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum not less than one thousand dollars, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of

liquor dealers by the United States, and the payment of such special tax by any person within the parts of said State hereinabove defined shall constitute *prima facie* evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the liquor is to be used, and no sale shall be made for medicinal purposes except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a *bona fide* prescription signed by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered, and the register thereof, together with the affidavits and prescriptions pertaining thereto, shall be open to inspection by any officer or citizen of said State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for treatment of disease which after his own personal diagnosis he shall deem to require such treatment, shall, upon conviction thereof, be punished for each offense by fine of not less than two hundred dollars or by imprisonment for not less than thirty days, or by both such fine and imprisonment; and any person connected with any such agency who shall be convicted of making any sale or other disposition of liquor contrary to these provisions shall be punished by imprisonment for not less than one year and one day. Upon the admission of said State into the Union these provisions shall be immediately enforceable in the courts of said State."

That section 22 of said Enabling Act provides:

"That the constitutional convention provided for herein shall, by ordinance irrevocable, accept the terms and conditions of this act."

II.

Petitioner further shows that, pursuant to said section 22 of said Enabling Act, it was ordained by the constitutional convention, which convened pursuant to the provisions of said Enabling Act and framed petitioner's constitution, as follows:

"Be it ordained by the constitutional convention for the proposed State of Oklahoma, that said constitutional convention do, by this ordinance irrevocable, accept the terms and conditions of an act of the Congress of the United States, entitled, 'An act to enable the people of Oklahoma and the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States,' approved June the sixteenth, Anno Domini, nineteen hundred and six."

Petitioner further shows that sections 1 and 7 of article I of its constitution are as follows:

"SECTION 1. The State of Oklahoma is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land.

"SECTION 7. The manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within those parts

of the State, heretofore known as the Indian Territory and the Osage Indian reservations, and within any other parts of the State which existed as Indian reservations on the first day of January, nineteen hundred and six, is prohibited for a period of twenty-one years from the date of the admission of the State into the Union, and thereafter until the people of the State shall otherwise provide by amendment of this constitution and proper State legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale, and wine, contrary to the provisions of this section, or who shall, within the above-described portions of the State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from other parts of the State into the portions hereinbefore described, shall be punished, on conviction thereof, by fine not less than fifty dollars and by imprisonment not less than thirty days for each offense: *Provided*, That the legislature may provide by law for one agency under the supervision of the State in each incorporated town of not less than two thousand population in the portions of the State hereinbefore described; and if there be no incorporated town of two thousand population in any county in said portions of the State, such county shall be entitled to have one such agency, for the sale of such liquors for medicinal purposes; and for the sale, for industrial purposes, of alcohol which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed

an approved bond, in a sum not less than one thousand dollars, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the parts of the State hereinabove defined shall constitute *prima facie* evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the liquor is to be used, and no sale shall be made for medicinal purposes except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a *bona fide* prescription signed by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered, and the register thereof, together with the affidavits and prescriptions pertaining thereto, shall be open to inspection by any officer or citizen of the State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for treatment of disease which, after his own personal diagnosis, he shall deem to require such treatment, shall, upon conviction thereof, be punished for each offense by fine of not less than two hundred dollars, or by imprisonment; and any person connected with any such agency, who shall be convicted of making any sale or other disposition of liquor contrary to these provisions, shall be punished by imprisonment for not less than one year and one day. Upon the admission of the State into the Union these provisions shall be immediately enforceable in the courts of the State."

Petitioner further shows that section 30 of article II of its constitution provides:

"SEC. 30. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches or seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, describing as particularly as may be the place to be searched and the person or thing to be seized."

Petitioner further shows that section 1, article VII, of its constitution provides:

"SECTION 1. The judicial power of this State shall be vested in the senate, sitting as a court of impeachment, a supreme court, district courts, county courts, courts of justices of the peace, municipal courts, and such other courts, commissions or boards, inferior to the supreme court, as may be established by law."

Petitioner further shows that section 1, article XV, of its constitution provides:

"SECTION 1. Senators and representatives and all judicial, State, and county officers shall, before entering upon the duties of their respective offices, take and subscribe to the following oath or affirmation:

" 'I, ———, do solmenly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity; that I have not paid, or contributed, either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not knowingly, violated any election law of the

State, or procured it to be done by others in my behalf; that I will not, knowingly, receive directly or indirectly, any money or other valuable thing, for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law, and I further swear (or affirm) that I will not receive, use, or travel upon any free pass or on free transportation during my term of office.' "

Petitioner further shows that at the time its constitution was submitted to a vote of its people for their approval or rejection there was submitted a separate article providing for State-wide prohibition, the same to become a part of petitioner's constitution if approved by a majority of the qualified voters voting thereon, and that at said election said prohibition article obtained a majority of the votes cast thereon and thereby became and is a part of petitioner's constitution; that said prohibition article is as follows:

"The manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within this State, or any part thereof, is prohibited for a period of twenty-one years from the date of the admission of this State into the Union, and thereafter until the people of the State shall otherwise provide by amendment of this constitution and proper State legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale, and wine, within this State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from one place within this State to another place therein, except the conveyance of a lawful purchase as herein authorized, shall be punished, on conviction thereof, by fine not

less than fifty dollars and by imprisonment not less than thirty days for each offense: *Provided*, That the legislature may provide by law for one agency under the supervision of the State in each incorporated town of not less than two thousand population in the State; and if there be no incorporated town of two thousand population in any county in this State, such county shall be entitled to have one such agency, for the sale of such liquors for medicinal purposes; and for the sale, for industrial purposes, of alcohol which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum not less than one thousand dollars, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the State shall constitute *prima facie* evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the liquor is to be used, and no sale shall be made for medicinal purposes, except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a *bona fide* prescription signed by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered, and the register

thereof, together with the affidavits and prescription pertaining thereto, shall be open to inspection by any officer or citizen of the State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for treatment of disease which after his own personal diagnosis he shall deem to require such treatment, shall, upon conviction thereof, be punished for each offense by fine of not less than two hundred dollars or by imprisonment for not less than thirty days, or by both such fine and imprisonment; and any person connected with any such agency who shall be convicted of making any sale or other disposition of liquor contrary to these provisions shall be punished by imprisonment for not less than one year and one day. Upon the admission of this State into the Union these provisions shall be immediately enforceable in the courts of the State: *Provided*, That there shall be submitted separately, at the same election at which this constitution is submitted for ratification or rejection, and on the same ballot, the foregoing article—entitled 'Prohibition,' on which ballot shall be printed FOR STATE-WIDE PROHIBITION and AGAINST STATE-WIDE PROHIBITION: *And provided further*, That, if a majority of the votes cast for and against State-wide prohibition are for State-wide prohibition, then said article—shall be and form a part of this constitution and be in full force and effect as such, as provided therein, but, if a majority of said votes shall be against State-wide prohibition, then the provisions of said article shall not form a part of this constitution, and shall be null and void."

III.

Petitioner further shows the following are, and at all times hereinafter mentioned were, among others, its laws, which said laws at all times hereinafter mentioned were, and now are, in full force, operation, and effect, to wit:

SEC. 4180 OF THE 1909 COMP. LAWS OF OKLA.—
“It shall be unlawful for any person, individual or corporate, to manufacture, sell, barter, give away, or otherwise furnish except as in this act provided, any spirituous, vinous, fermented or malt liquors, or any imitation thereof or substitute therefor; or to, manufacture, sell, barter, give away, or otherwise furnish any liquors or compounds of any kind or description whatsoever, whether medicated or not, which contain as much as one-half of one per centum of alcohol measured by volume, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States; or to ship or in any way convey such liquor from one place within this State to another place therein except the conveyance of a lawful purchase as herein authorized; or to solicit the purchase or sale of any such liquors, either in person or by sign, circular, letter, card, price-list, advertisement or otherwise, or to distribute, publish or display any advertisement, sign or notice where any such liquor may be manufactured, bartered, sold, given away, or otherwise furnished, or to have the possession of any such liquors with the intention of violating any of the provisions of this act. A violation of any provisions of this section shall be a misdemeanor, and shall be punished by a fine of not less than fifty dollars nor more

than five hundred dollars and by imprisonment for not less than thirty days, nor more than six months; provided, however, that the provisions of this act shall not apply to the manufacture and sale of unfermented cider and wine made from apples, grapes, berries or other fruit grown in this State, and to the use of wine for sacramental purposes in religious bodies."

SEC. 4181 OF THE 1909 COMP. LAWS OF OKLA.—
"The payment of the special tax required of liquor dealers by the United States by any person within this State, except local agents appointed as hereinbefore provided, shall constitute *prima facie* evidence of an intention to violate the provisions of this act."

SEC. 4182 OF THE 1909 COMP. LAWS OF OKLA.—
"Every person who shall within this State, directly or indirectly, keep or maintain by himself, or by associating or combining with others, any clubroom or other place in which any liquor, the sale of which is prohibited by this act, is received or kept for the purpose of selling, bartering, giving away, or otherwise furnishing, or for distribution or division among the members of any club or association by any means whatsoever, and every person who shall sell, barter, give away or otherwise furnish, distribute or divide any such liquors so received or kept shall be guilty of a misdemeanor."

SEC. 4184 OF THE 1909 COMP. LAWS OF OKLA.—
"If it shall be made to appear to any judge of the district or county court or justice of peace that there is probable cause to believe that liquors are being manufactured, sold, bartered, given away, or otherwise furnished, or are being kept for the purpose of

selling, bartering, giving away, or otherwise furnishing liquors in violation of this act, such judge or magistrate shall issue a warrant directed to any officer of the county whom the complainant may designate, having the power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant, and to seize all such liquors there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away, or otherwise furnishing of such liquors, and safely keep the same, and to make return within three days of said warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession the same was found, if any, and if no person be found in the possession of said property, his return shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such liquors, furniture or fixtures so seized, and if no person be found in the possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same are found."

SEC. 4185 OF THE 1909 COMP. LAWS OF OKLA.—
"Upon the return of such warrant as provided in the next preceding section, the magistrate or judge shall fix a time, not less than ten days nor more than thirty days thereafter, for hearing of said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof was used in violation of any of the provisions of this act. At such hearing, any party claiming an interest in any such property, may appear and be heard, and if upon such hearing it shall appear that any property so seized was knowingly used, or permitted to be used,

in violation of any provision of this act, the same shall be adjudged forfeited by the State, and shall be delivered to the custody of the superintendent, to be disposed of under the provisions of this act. If upon such hearing it shall appear that any property so seized was not kept or used for an unlawful purpose, or if any person shall show that he is the owner of any furniture, fixtures or other property seized under such warrant, and that the same, or any part thereof, were unlawfully used without his knowledge or consent, the same shall be returned to its lawful owner."

SEC. 4187 OF THE 1909 COMP. LAWS OF OKLA.—
 "No such warrant shall issue but upon probable cause, supported by oath or affirmation describing as particularly as may be the place to be searched, or the person or thing to be seized."

SEC. 4189 OF THE 1909 COMP. LAWS OF OKLA.—
 "When a violation of any provision of this act shall occur in the presence of any sheriff, constable, marshal or other officer having power to serve criminal process, it shall be the duty of such officer having power, without warrant, to arrest the offender and seize the liquor, bars, furniture, fixtures, vessels, and appurtenances thereunto belonging so unlawfully used, and to take the same immediately before the court or judge having jurisdiction in the premises, and there make complaint, under oath, charging the offense so committed, and he shall also make return, setting forth a particular description of the liquor and property seized, and of the place where the same was so seized, whereupon the court or judge shall issue a warrant commanding and directing the officer to hold the property so seized in his possession until discharged by due process of law, and such property

shall be held and a hearing and adjudication on said return had in like manner as if the seizure had been made under a warrant therefor."

SEC. 4193 OF THE 1909 COMP. LAWS OF OKLA.—
 "All places where liquors of any kind are manufactured, sold, bartered, given away or otherwise furnished in violation of any of the provisions of this act, are hereby declared to be public nuisances and shall be abated in the manner provided by law at the suit of any citizen of the State."

SEC. 4198 OF THE 1909 COMP. LAWS OF OKLA.—
 "It shall be the duty of the county attorneys in their respective counties diligently to attend all inquisitions held under the provisions of this act and diligently to prosecute all violations, of this act, of which they may have, or can obtain, knowledge, and to bring all suits and actions for the recovery of fines, penalties and forfeitures provided for herein; and any county attorney neglecting or refusing or failing to perform any duty required by the provisions of this act may be removed from office as hereinafter provided."

SEC. 4203 OF THE 1909 COMP. LAWS OF OKLA.—
 "All sheriffs, constables, marshals and police officers, and all county and city attorneys, shall diligently enforce all the provisions of this act. If any such officer shall fail or refuse to do or perform any duty required by the provisions of this act, he shall be removed from office as herein provided." * * *

SEC. 4204 OF THE 1909 COMP. LAWS OF OKLA.—
 "The Governor shall have power to appoint an attorney who shall have been a resident in this State for at least two years and shall have been a lawyer li-

censed by some court of record for at least five years, who shall be known as counsel for the Governor. He shall, under the direction of the Governor, assist in enforcing the provisions of this act, and the other laws of the State, and shall perform such other duties as the Governor may, from time to time require. He shall have all the powers of county attorneys in their respective counties. He shall hold office during the pleasure of the Governor, and shall give bond, to be approved by him, conditioned for the faithful discharge of his duties, in the sum of three thousand dollars (\$3,000) and shall receive a salary, to be fixed by the Governor of not more than twenty-five hundred dollars (\$2,500) per annum, payable monthly: Provided, that in lieu of, or in addition to appointing such attorney, the Governor may call upon the Attorney General or his assistant to perform such service."

SEC. 6254 OF THE 1909 COMP. LAWS OF OKLA.—
 "He shall execute every summons, order or other process, and return the same as required by law; and if he fail to do so, unless he make it appear to the satisfaction of the court that he was prevented by inevitable accident from so doing, he shall be amerced by the court in a sum not exceeding one thousand dollars, upon motion and ten days' notice, and shall be liable to the action of any person aggrieved by such failure."

SEC. 6446 OF THE 1909 COMP. LAWS OF OKLA.—
 "It shall be the duty of every constable to serve all warrants, writs, precepts, executions and other process to him directed and delivered, and, in all respects whatever, to do and perform all things pertaining to the office of constable."

IV.

Petitioner further shows that said sections 4184 and 4185, *supra*, of its 1909 Compiled Laws, the same being sections 5 and 6 of article III of chapter 69 of petitioner's Session Laws of 1907-8, have been passed upon and construed by petitioner's Supreme Court in the case of *State ex rel. Caldwell v. Hooker*, County Judge, 98 Pac., 964; that said decision of petitioner's said Supreme Court became and is a part and parcel of petitioner's laws, and that portion of said decision wherein said sections 4184 and 4185, *supra*, are passed upon and construed is as follows:

"Does said act violate the provisions of section 7, article 2 (Bunn's Ed., sec. 16), of the constitution of Oklahoma, or of the Fourteenth Amendment to the Constitution of the United States, in that no provision is made for any legal notice, constructive or otherwise, of the time and place, or the person or tribunal before whom the hearing shall be had to determine whether or not the property taken under the search warrant shall be forfeited? To invest a court with effectual jurisdiction in any case, the thing in controversy, or the parties to such action, must be subjected to the process of the court. Certain cases may proceed *in rem*, notice being taken rather of the thing in controversy than of the party concerned, and the process is to be served upon that which is the object of the action, without special reference to notice to the parties interested. In such proceedings *in rem* a substituted service may be provided by statute in such cases, in the form of a notice published in the public journals, or posted, as may be directed by statute, the mode being chosen with a view to bring it home, if possible, to the knowledge of the parties being affected, and to give them an opportunity to appear and defend, and the power

of the legislature to prescribe such notice and give it effect as process rests upon the necessity of the case, and has long been recognized and acted upon. Such notice however, is restricted, so as to enable the court to give effect to the proceeding so far as it is one *in rem*; but, whenever the *res* is disposed of, the authority of the court ceases, and such notice cannot be made available for additional purposes. When the legislature prescribes a kind of notice by which it is reasonably probable that the party proceeded against will be apprised of what is going on against him, and an opportunity is afforded him to defend, the courts will not exercise the power to pronounce the proceeding illegal. Cooley's Const. Lim. (7th ed.), pp. 580, 581, 582, 583; Borden *v.* State, 11 Ark., 519; 44 Am. Dec., 217; Empire State Bank, 18 N. Y., 215; Rockwell *v.* Nearing, 35 N. Y., 302; Happy *v.* Mosher *et al.*, 48 N. Y., 237; Hiller *v.* Burlington, etc., R. Co., 70 N. Y., 237; Eikenberry *v.* Edwards, 67 Iowa, 622; 25 N. W., 832; 56 Am. Rep., 360; Gilchrist *v.* Schmidling, 12 Kan., 272; Pennoyer *v.* Neff, 95 U. S., 743; 24 L. Ed., 565; Beard *et al.* *v.* Beard, 21 Ind., 321; Cupp *et al.* *v.* Commissioners *et al.*, 19 Ohio St., 181; Fisher *v.* McGirr, 1 Gray (Mass.), 1; 61 Am. Dec. 381.

"Under section 5, article 3 of the enforcing act, under certain conditions it is the duty of the judge or magistrate to issue a warrant, directed to any officer of the county, whom the complainant may designate, having power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant, and to seize all such liquors there found, together with the vessels in which they are contained, and all implements, furniture, and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away or otherwise furnishing of such liquors, and safely

keep the same, and to make return within three days of such warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession it was found, if any, and if no person be found in the possession of said property, his return should so state. Now, if such a warrant is served upon the owner or party in possession of such liquors, indicating and describing the premises in which same is contained, and authorizing the seizure of all liquors therein found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away, or otherwise furnishing of such liquors, can this court say that such notice would not reasonably inform the party in possession, or the interested party if he saw it posted, that his property had been seized? Section 5675, Wilson's Rev. & Ann. St. Okla., 1903.

"Section 6, article 3, of the enforcing act, provides that: 'Upon the return of such warrant as provided in the next preceding section, the magistrate or judge shall fix a time, not less than ten days nor more than thirty days thereafter, for hearing of said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof was used in violation of any of the provisions of this act. At such hearing any party claiming an interest in any such property, may appear and be heard, and if upon such hearing it shall appear that any property so seized was knowingly used, or permitted to be used, in violation of any provision of this act, the same shall be adjudged forfeited by the State, and shall be delivered to the custody of the superintendent, to be disposed of under the provisions of this act. If upon such hearing it shall appear that any property so seized was not kept or used for an unlawful

purpose, or if any person shall show that he is the owner of any such furniture, fixtures or other property seized under such warrant, and that the same, or any part thereof, were unlawfully used without his knowledge or consent, the same shall be returned to its lawful owners.' Section 4, par. 557, div. 8, c. 38, vol. 1 (2d ed., 1896), Starr & C. Ann. St. Ill., provides: 'If there is satisfactory evidence that any property stolen, embezzled, or obtained by false tokens or pretenses, or that any of the other things for which a search warrant may be issued, by the provisions of this act, are kept, concealed, prepared or used in a particular house or place, a warrant may be issued by two judges or justices of the peace, to authorize the search of such house or place in the night-time and to bring the property or things described in the warrant or summons, and the person in whose possession they are found, before either of the judges or justices who issued the warrant, or some other judge or justice of the peace of the county.' Section 7 (par. 560) of the same chapter and division provides: 'When an officer, in the execution of a search warrant, finds stolen or embezzled property, or seizes any of the other things for which a search is allowed by this act, all the property and things so seized shall be safely kept by direction of the judge, justice or court, so long as necessary for the purpose of being produced or used as evidence on any trial. As soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all the other things seized by virtue of such warrants shall be burnt, or otherwise destroyed, under the direction of the judge, justice or court.'

"In the case of *Gelmon v. Britton*, 155 Ill. 232; 40 N. E., 598, the court said: 'Statutes of the character of those in question are enacted upon the theory

that the proceedings shall be against the thing or *in rem*. And the State and Federal courts abound in decided cases in which laws of this kind have been held constitutional and valid, where no service was had or contemplated, other than that upon or against the offending thing, and the person in whose possession it is found. In respect to the major part, if, indeed, not all, of the property of the character described in the act, except that denominated as "stolen" or "embezzled," it would be practically impossible to find the owners, if any. When counterfeit or spurious coin, forged bank notes, and instruments or tools for making the same are confiscated by public officers, the owners are often unknown, if not in remote and distant parts. Owners of obscene and vulgar books, pamphlets, or pictures, who circulate or dispose of their goods secretly and in violation of law, are not readily found and identified with the goods, nor do either they or spurious coin makers hasten to claim rights of property in the things seized. Gambling tables, implements, and devices are not usual and customary subjects of property, and, if such articles chance to be seized by vigilant officers of the law, the owners are more difficult to locate and apprehend. Experience has shown that while the property, materials, and paraphernalia may be seized, and the immoral resort or rendezvous thus, perhaps, broken up, the proprietors, or those who engage in the immoral and nefarious business, are on the alert, and not infrequently evade, if they do not altogether escape, the penalties of the law. The object of the proceedings to be instituted under the statute is that the unlawful and immoral practice be stopped, by destroying implements, apparatus, materials, etc., with which it is carried on. The theory is, with respect to such property, that no one is

longer the owner of it. The moment that it is used and applied in the unlawful business it becomes liable to forfeiture; and, though the claimant may appear and claim, he has no greater rights in property so used than has any other person. That the business or traffic designated, in which the offensive property is used, is immoral and unlawful, and therefore a public nuisance, cannot be questioned. And for the promotion of the general welfare the State, under its police powers, has the undoubted right to adopt the most expeditious, inexpensive, and effective mode of abolishing and abating the same. That under the various acts of Congress goods and things are seized, condemned, and destroyed without service of process on the owner other than seizure of the goods and arrest of the person in whose possession they are found, and such statutes and proceedings under them regarded constitutional and valid, has been determined in many adjudicated cases in the Federal courts. *Boston Beer Co. v. Massachusetts*, 97 U. S., 25; 24 L. Ed., 989; *Bartemeyer v. Iowa*, 18 Wall., 129, 21 L. Ed., 929; *U. S. v. Distillery No. 28*, 6 Bliss., 484; Fed. Cas. No. 14,966; *Boyd v. U. S.*, 116 U. S., 616, 6 Sup. Ct., 524, 29 L. Ed., 746; *Stockwell v. U. S.*, 3 Cliff., 284; Fed. Cas. No. 13,466; *Locke v. U. S.*, 7 Cranch, 339, 3 L. Ed., 364; *The Luminary*, 8 Wheat., 407, 5 L. Ed., 647; *Henderson's Distilled Spirits*, 14 Wall., 44, 20 L. Ed., 815, and cases cited.

"The exercise of such power should be properly guarded, and every proper means adopted, in order to prevent abuses and infringements of the rights of the citizens under the Constitution. In that case the legislature required that not only the property, but also the person in whose possession it was found, should be brought before the court in order to ac-

quaint the parties who may be interested with the proceeding, and that they be given an opportunity to be heard, concerning the disposition that should ultimately be made of the property. The legislature of this State required that a copy of such warrant should be served upon the person or persons found in possession of any such liquors, furniture, or fixtures so seized, and if any person be not found in the possession thereof, a copy of said warrant shall be posted upon the door of the building or room wherein the same are found. The magistrate or judge in issuing the warrant is required to describe and designate the place or premises to be searched, directing that such liquors, together with the vessels in which they are contained, and all implements, furniture, and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away, or otherwise furnishing of such liquors shall be seized and safely kept, and to make return within three days of such warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession the same was found, if any, and if no person was found in the possession of said property the return should so state. Section 6 (paragraph 559), division 8, c. 38, Illinois Statutes, *supra*, provides that such officer shall make a return particularly specifying the property taken, and the place where and the person from whom same was taken. The warrant shows from what court or by what magistrate or judge it was issued. The provision is made that, after the return of said warrant, the magistrate or judge shall fix a time, not less than 10 days nor more than 30 days thereafter, for hearing said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof, was used in violation of

any provision of said act. This limitation upon the power of such judge or justice as to the time in which he may not act, and the prescribed time in which he is required to act, was evidently done with a view of allowing time in which the owner of such property might appear and claim same; and the requirements that action should be taken within 30 days would prevent this property, in the event it was not entitled to be destroyed or confiscated under the law, from being held and kept from him an indefinite length of time. The Legislature has seen fit to require this form of notice, which they in their discretion must have deemed sufficient for the summary purposes and objects of the act. It is the duty of the court to hold statutes constitutional and valid if it can consistently and reasonably be done; and, in view of this clearly established doctrine, we are of the opinion that such notice of the proceedings and a hearing of the matters involved, and in the light of the authorities, we do not feel that we would be justified in holding that the same is in conflict with section 7, article 2 (Bunn's Ed., sec. 16), of the Constitution."

And petitioner further shows that said sections 4184 and 4185, *supra*, of petitioner's 1909 Compiled Laws, were further passed upon and construed by petitioner's Supreme Court in the case of *State v. 18 Casks of Beer et al.*, 104 Pac., 1093; that said decision of petitioner's said Supreme Court so passing upon and construing said sections 4184 and 4185 of petitioner's said laws, became and is a part and parcel of petitioner's laws, and that in said decision petitioner's said Supreme Court held as follows:

"A citizen of Oklahoma having purchased intoxicating liquors in another State and caused the same to be transported to him as consignee in this State by an interstate shipment, the laws of this State by

virtue of the police power (Act of Congress, Aug. 8, 1890, c. 728, 26 Stat. at Large, 313) attach immediately after the consummation of the delivery by the carrier to the consignee. (a) Such consignee having received the actual and exclusive possession of such liquors from the carrier at its depot, and retaining such possession on its said premises with the purpose and the intention of selling and bartering the same contrary to the laws of this State, such liquors may be seized and confiscated under sections 5 and 6 of the Enforcing Act (Session Laws 1907-8, p. 605) before the same have been by said consignee conveyed from the carrier's premises to the consignee's residence, place of business or warehouse. (b) Such consignee having received the actual and exclusive possession of such liquor from the carrier at its depot, and retaining such possession on its said premises for his or his family's use, such liquors cannot be seized and confiscated under sections 5 and 6 of the Enforcing Act (Session Laws 1907-8, p. 605) either before or after the same have been conveyed from the carrier's premises to the consignee's residence."

V.

Petitioner further shows that its method of enforcing through its courts its prohibition laws hereinabove set forth, and of abating liquor nuisances found to exist within its borders, within the meaning of its said laws, is as follows:

Petitioner's district courts, county courts, and justice of peace courts are vested with jurisdiction of all actions against any particular quantity of intoxicating liquor for the purpose of determining whether or not said particular quantity of intoxicating liquor is an offending thing against petitioner's said laws, and therefore constitutes and is a public nuisance, within the purview and meaning of petitioner's

said laws hereinabove set forth; that all such actions are prosecuted by petitioner, The State of Oklahoma, directly, in its own name, against said particular quantity of intoxicating liquor as such offending thing; that all such actions are commenced by petitioner in its said courts in the following manner, to wit: Some person having knowledge of the facts appears before one of the judges of petitioner's district courts, or before one of the judges of petitioner's county courts, which said courts are courts of record, or before one of petitioner's justices of the peace, which said justices of the peace courts are not courts of record, and such person so appearing before such judicial officer makes a complaint in writing, and, supported by his oath or affirmation, which said complaint so sworn to describes as particularly as may be the place to be searched and the intoxicating liquor to be seized, and also recites facts, which, standing alone and undisputed, are sufficient to establish *prima facie* the existence of such intoxicating liquors as a liquor nuisance; that upon such sworn complaint, in writing, petitioner's said judicial officer, to whom the same is presented, judicially determines whether or not there is probable cause for the issuance of a warrant, pursuant to the terms and provisions of said sections 4184 and 4185, *supra*, of petitioner's said laws, and if petitioner's said judicial officer thereupon judicially determines that such probable cause exists, he thereupon causes to be instituted, in the respective judicial tribunal over which he presides, an action by this petitioner, The State of Oklahoma, against such intoxicating liquor so described in said complaint, and forthwith issues in said action a search and seizure warrant, pursuant to the terms and provisions of said sections 4184 and 4185, *supra*, of petitioner's said laws; and such search and seizure warrant is, by petitioner's said judicial officer so issuing the same, directed to one of the executive officers of said judicial tribunal over which said judicial officer presides, to wit, a constable or sheriff, or a duly constituted deputy of either, and such warrant is by

such judicial officer delivered to such executive officer of said judicial tribunal for service and execution; that petitioner's said sheriff or constable, or said duly constituted deputy of either, to whom such search and seizure warrant is so directed and delivered, takes the same and proceeds therewith to the place described therein, and by authority thereof seizes and takes possession of all intoxicating liquor there found which is described in said warrant, and petitioner's said officer so executing said warrant thereupon serves a copy of the same upon the person or persons found in possession of such intoxicating liquor, and if no person be found in possession thereof said officer posts a copy of such warrant on the door of the building or room or compartment or place where said intoxicating liquor is found; that thereafter, and within three days from the issuance of such warrant, said officer makes due return thereof to petitioner's said judicial tribunal out of which the same issued, and in such return said officer shows all acts and things done by him thereunder, with a particular statement of all intoxicating liquors seized and of the person or persons in whose possession the same were found, if any, and if no person be found in possession of said intoxicating liquors his return so states; that upon such return of such warrant, in manner and form as hereinabove stated, petitioner's judicial officer who issued said warrant fixes a time not less than ten days nor more than thirty days thereafter for a hearing upon said return, and at such hearing petitioner's said judicial tribunal proceeds to hear and determine whether or not the intoxicating liquor so seized or any part thereof was a thing offending against petitioner's said laws, and was therefore a liquor nuisance. At such hearing any party claiming an interest in any such intoxicating liquor may appear before petitioner's said judicial tribunal and be heard, and if upon such hearing it shall appear or shall be shown that any such intoxicating liquor so seized was at the time of such seizure a shipment made to a person within petitioner's

borders from a place outside of petitioner's border, and had not been delivered by the interstate carrier, under the contract of interstate shipment, to the consignee at the place of destination, then, in that event, pursuant to the decision of petitioner's Supreme Court in the case of *State v. 18 Casks of Beer et al.*, *supra*, petitioner's said judicial tribunal forthwith orders and adjudges that such intoxicating liquor be returned to the person or persons so claiming it, on the ground that at the time it was seized it had not ceased to be interstate commerce within the meaning of subdivision 3, section 8, article I, of the Constitution of the United States, and had not arrived within petitioner's borders within the meaning of the act of Congress of August 8, 1890 (c. 728, 26 Stat., 313; U. S. Comp. St., 1901, p. 3177). Provided, however, that if it be shown and established at such hearing that said intoxicating liquor or any portion thereof was so shipped from a point outside petitioner's borders to a place within petitioner's borders, and that such act of shipment was performed in violation of section 3449 of the Revised Statutes of the United States, or in violation of any one or more of sections 238, 239, and 240 of the act of Congress of March 4, 1909 (35 Stat. L., 1136-7), or that said intoxicating liquor was "adulterated" or "misbranded," within the meaning of the act of Congress of June 30, 1906, ch. 3915, 34 St. L., 768, commonly known as the Pure Food and Drug Act, then as to all such liquor so shipped or "adulterated" or "misbranded" in violation of said acts of Congress, petitioner's said judicial tribunals hold said commerce clause of the Constitution of the United States, *supra*, to be inapplicable, on the ground that such intoxicating liquor is not and, under such circumstances, could not be made a legitimate subject of interstate commerce, and, therefore, as to all such liquor, petitioner's said judicial tribunals proceed regardless of the fact that the same may have been in the possession of an interstate common carrier undelivered under a contract of interstate shipment at the time the seizure was made.

VI.

Petitioner further shows that respondents herein, The Circuit Court of the United States for the Eastern District of Oklahoma and Ralph E. Campbell, the district judge of said district, sitting as judge of said circuit court, have, in direct violation of the Eleventh Amendment to the Constitution of the United States and contrary to and in direct violation of section 720 of the Revised Statutes of the United States, assumed jurisdiction in certain suits in equity brought and now pending in said Circuit Court of the United States for the Eastern District of Oklahoma, to-wit: Equity Suit No. 576, entitled Missouri, Kansas & Texas Railway Company, complainant, *v.* Fred Caldwell, B. J. Waugh, R. E. Lozier, M. A. Breckinridge, T. R. Dean, Lon Lewis, John A. Harrison, J. J. Moran, T. A. Henry, G. W. Davis, N. J. Bubser, and Robert H. Tarter, respondents; and Equity Suit No. 1225, entitled Thixton-Millett & Company, a corporation, complainant, *v.* S. W. Stone, State dispensary agent, John Hays, assistant counsel to the governor, Clark Compton, W. F. Blakemore, R. R. Ramsey, sheriff, J. M. Brucker, and Grant Hamlin, respondents; and Equity Suit No. 1232, entitled Dan Danciger, Abe Danciger, Jack Danciger, M. O. Danciger, and Joseph Danciger, co-partners, trading under the firm name of The Harvest King Distilling Company and Danciger Brothers, complainants, *v.* S. W. Stone, superintendent of the State agency, R. B. Ramsey, sheriff of Muskogee county, Oklahoma, W. F. Blakemore, deputy sheriff of Muskogee county, Oklahoma, and Clark Compton, deputy sheriff of Muskogee county, Oklahoma; and Equity Suit No. 1235, entitled Missouri, Kansas & Texas Railway Company, complainant, *v.* Henry E. Ridenhour and Holland Clarke, respondents; and Equity Suit No. 1236, entitled Missouri, Kansas & Texas Railway Company, complainant, *v.* Robert E. Waterson, W. F. Blakemore, and Clark Compton, respondents; and Equity Suit No. 1237, entitled Missouri, Kansas

& Texas Railway Company, complainant, *v.* W. F. Blakemore, Ed Odom, J. R. Coker, and Clarence Turner, respondents; and Equity Suit No. 1242, entitled The O. F. Haley Company, a corporation, complainant, *v.* S. W. Stone, State dispensary agent, John Hays, assistant counsel to the governor, Clark Compton, W. F. Blakemore, John L. Wisener, sheriff, J. M. Brucker, Grant Hamlin, Holmes Akers, W. E. Landrum, T. A. Maxwell, and H. F. Newblock, respondents; and Equity Suit No. 1266, entitled Fehrenbach Wine & Liquor Company, a corporation, complainant, *v.* S. W. Stone, State dispensary agent, and John Hays, assistant counsel to the governor, respondents; and Equity Suit No. 1267, entitled Missouri, Kansas & Texas Railway Company, complainant, *v.* John M. Hays, John H. Kane, John D. Jordan, John B. Trail, John Wilson, R. S. Duke, J. L. Walker, and Pat Fields, respondents.

Petitioner further shows that the relief sought in each of said suits hereinabove referred to is the staying of proceedings in petitioner's said courts, which said proceedings are instituted and prosecuted by petitioner in its said courts pursuant to the terms and provisions of said sections 4184 and 4185, *supra*, of petitioner's said laws, and in manner and form as hereinabove set forth in section V of this petition, and to enjoin this petitioner, The State of Oklahoma, from prosecuting any action in its said courts, under and pursuant to said sections 4184 and 4185, *supra*, of petitioner's said laws, against any intoxicating liquors, in all cases where it may become necessary to try and determine any one or more of the following issues, to wit:

(a) The issue as to whether or not the particular intoxicating liquor in question was, at the time of its seizure, a *bona fide* shipment made to a person within petitioner's borders from a place outside of petitioner's borders, which said shipment had not been delivered by the interstate carrier under the contract of interstate shipment to the consignee at the place of destination.

(b) The issue as to whether or not the particular intoxicating liquor in question had been shipped from a point outside of petitioner's borders to a place within petitioner's borders in violation of section 3449 of the Revised Statutes of the United States.

(c) The issue as to whether or not the particular intoxicating liquor in question had been shipped from a place outside of petitioner's borders to a place within petitioner's borders in violation of any one or more of sections 238, 239, and 240 of the act of Congress of March 4, 1909 (35 Stat. L., 1136-7).

(d) The issue as to whether or not the particular intoxicating liquor in question, although shipped from a place outside of petitioner's borders to a place within petitioner's borders and in the possession of the interstate carrier, undelivered under the contract of interstate shipment at the time the seizure was made, is "adulterated" or "misbranded" within the meaning of the act of Congress of June 30, 1906, chapter 3915, 34 Stat. L., 768, commonly known as the Pure Food and Drug Act.

Petitioner further shows that the respondents herein, The Circuit Court of the United States for the Eastern District of Oklahoma and Ralph E. Campbell, the district judge of said district, sitting as judge of said Circuit Court, acting in excess of and wholly beyond the power and jurisdiction conferred upon them by the laws of the United States, and in direct violation of said Eleventh Amendment to the Constitution of the United States, in manner and form hereinabove alleged, have assumed and undertaken to give and extend to the complainants, in each of said several suits hereinabove referred to, said relief so sought therein by said complainants; and to the end of thus granting and affording unto said complainants, in each of said suits hereinabove referred to, said relief, said respondents, The Circuit Court of the United States for the Eastern District of Oklahoma and Ralph E. Campbell, district judge of said district, sitting as judge of said Circuit Court,

have done indirectly that which, by the terms of said Eleventh Amendment to the Constitution of the United States and by said section 720 of the Revised Statutes of the United States, they are expressly prohibited doing directly, in that in each of said suits hereinabove referred to they have issued divers and sundry pretended restraining orders, pretended temporary injunctions, and pretended injunctions against divers and sundry of petitioner's public officers who are expressly charged with official duties in the matter of enforcing petitioner's prohibition laws hereinabove referred to, and particularly against the following of petitioner's said public officers, to wit: S. W. Stone, petitioner's agency superintendent, appointed by its Governor pursuant to section 4156 of the 1909 Comp. Laws of Oklahoma, which said superintendent is clothed with power and authority and charged with the performance of certain public duties, as provided by chapter 61 of said 1909 Comp. Laws of Oklahoma; Fred S. Caldwell, counsel to the Governor, and all his assistants, which said counsel to the Governor is clothed with power and authority and charged with the performance of certain public duties, as provided by article III, chapter 61, of said 1909 Comp. Laws of Oklahoma, and particularly by section 4204 of said laws, *supra*, and all of petitioner's employees in said State agency department and in said counsel to the Governor's department who are employed in said departments for and on behalf of petitioner by said S. W. Stone; agency superintendent, and said Fred S. Caldwell, counsel to the Governor, respectively, upon the direction and approval of petitioner's Governor, Charles N. Haskell; all of petitioner's county attorneys in the several counties being and situate in said eastern district of Oklahoma, which said county attorneys are petitioner's public prosecutors and are particularly charged with a diligent enforcement of petitioner's prohibition laws hereinabove set forth; petitioner's sheriffs and all their deputies and under sheriffs in the several counties being and situate in said eastern district of Oklahoma; petitioner's constables and all their deputies

in the several municipal townships being and situate in said eastern district of Oklahoma, and all police officers who are peace officers having power to serve criminal process and who are peace officers of petitioner's several municipalities throughout said eastern district of Oklahoma; that by the terms of said pretended restraining orders, said pretended temporary injunctions, and said pretended injunctions so issued against petitioner's said public officers by said respondents, The Circuit Court of the United States for the Eastern District of Oklahoma and Ralph E. Campbell, district judge of said district, sitting as judge of said Circuit Court, all proceedings in petitioner's said courts instituted and prosecuted by petitioner, The State of Oklahoma, pursuant to the terms and provisions of said sections 4184 and 4185, *supra*, of petitioner's said laws, and in manner and form as hereinabove set forth in section V of this petition, are stayed, enjoined, and prohibited, and petitioner's said public officers are, by the terms of said pretended restraining orders, said pretended temporary injunctions, and said pretended injunctions, ordered and commanded not to do or in any manner perform the official duties required by petitioner's said laws to be done and performed by them in the matter of such proceedings in petitioner's said courts, and more particularly are petitioner's said sheriffs, deputy sheriffs, constables, deputy constables, and police officers thereby ordered and commanded not to serve or execute any search and seizure warrant issued out of any of petitioner's courts or by any of petitioner's judicial officers, in manner and form hereinabove set forth in section V of this petition, in any case where a seizure of the intoxicating liquor described in such warrant would raise, at the hearing upon the return of said warrant, any one or more of the issues hereinabove stated and set forth in paragraphs (a), (b), (c), and (d) hereof; and such order and command so made by respondents, The Circuit Court of the United States for the Eastern District of Oklahoma and Ralph E. Campbell, the district judge of said district, sitting as judge of said Circuit Court,

have been made under threat of punishment as for a contempt of said court for any violation thereof or disobedience thereto.

Petitioner further shows that notwithstanding the fact that said pretended restraining orders, said pretended temporary injunctions and said pretended injunctions so issued by respondents, The Circuit Court of the United States for the Eastern District of Oklahoma and Radph E. Campbell, the district judge of said district, sitting as judge of said Circuit Court, against petitioner's said public officers in manner and form hereinabove set forth, are wholly without jurisdiction and void, by reason of the fact that they were issued in violation of said 11th Amendment to the Constitution of the United States, and in direct violation of Section 720 of the Revised Statutes of the United States, still said respondents, The Circuit Court of the United States for the Eastern District of Oklahoma and Ralph E. Campbell, the district judge of said district, sitting as judge of said Circuit Court, are constantly insisting upon a strict compliance therewith, and are constantly demanding of petitioner's said public officers strict obedience thereto under penalty of punishment, as for a contempt of court; and that unless prohibited by proper writ issued from this honorable court, in manner and form hereinafter prayed by this petitioner, said respondents, The Circuit Court of the United States for the Eastern District of Oklahoma and Ralph E. Campbell, the district judge of said district, sitting as judge of said Circuit Court, will continue to so act in excess of and beyond the jurisdiction, judicial power and authority of said Circuit Court of the United States for the Eastern District of Oklahoma and the honorable judges thereof, by perpetuating said void and pretended restraining orders, temporary injunctions and injunctions, as lawful, valid and *bona fide* restraining orders, temporary injunctions and injunctions, in that they will cause to be attached and published, as for a contempt of court, any and all of petitioner's said public officers who proceed to do, discharge and perform their duties as such public officers of

petitioner and thereby violate the terms of said void and pretended restraining orders, temporary injunctions and injunctions.

Petitioner further shows that by the wrongful acts of said respondents, The Circuit Court of the United States for the Eastern District of Oklahoma and Ralph E. Campbell, the district judge of said district, sitting as judge of said Circuit Court, in so issuing, perpetuating, and enforcing said void and pretended restraining orders, temporary injunctions and injunctions, in manner and form hereinabove set forth, this petitioner, The State of Oklahoma, has suffered and is suffering great and irreparable injury, for which said petitioner has no adequate remedy at law; that said acts of said respondents constitute and are an unlawful and unwarranted interference with petitioner, The State of Oklahoma, in the exercise of its governmental functions and sovereign powers in connection with the enforcement of petitioner's said prohibition laws, a portion of which said prohibition laws the Congress of the United States, by imperative mandate expressed in said Enabling Act, hereinabove referred to, demanded should be a part and parcel of petitioner's laws for a period of twenty-one years.

Wherefore, the premises aforesaid duly considered, petitioner, The State of Oklahoma, prays the issuance of a writ of prohibition from this honorable court directed to said respondents, The Circuit Court of the United States for the Eastern District of Oklahoma and Ralph E. Campbell, the district judge of said district, sitting as judge of said Circuit Court, prohibiting them, and each of them, from in any manner, either directly or indirectly, enforcing or attempting to enforce in any manner or to any degree whatsoever, against petitioner's said public officers, and particularly, against petitioner's said State Agency Superintendent, his agents, representatives, and employees; petitioner's said Counsel to the Governor, his assistants, agents, representatives, and employees; petitioner's said county attorneys throughout said eastern district of Oklahoma, their assist-

ants, representatives, and employees; petitioner's said county sheriffs throughout said eastern district of Oklahoma, their under sheriffs, deputy sheriffs, assistants, representatives, and employees; petitioner's said constables throughout said eastern district of Oklahoma, their deputies, assistants, and employees; and, against petitioner's peace officers throughout said eastern district of Oklahoma, who are police officers of petitioner's several municipalities, being and situate in said eastern district of Oklahoma, said pretended restraining orders, temporary injunctions and injunctions so issued and now pending in said equity suits numbered 576, 1225, 1232, 1236, 1237, 1242, 1266, and 1267, respectively; and prohibiting said respondents, The Circuit Court of the United States for the Eastern District of Oklahoma, and Ralph E. Campbell, district judge of said district, sitting as judge of said Circuit Court, from in any manner whatsoever staying or interfering with the prosecution and conduct of any proceeding or proceedings in any court or courts of the State of Oklahoma, which said proceeding or proceedings are instituted and prosecuted by petitioner, The State of Oklahoma, in its said courts pursuant to the terms and provisions of said sections 4184 and 4185 of its 1909 Comp. Laws, by restraining, enjoining, or in any manner whatsoever interfering with any prosecuting attorney, sheriff, constable, policeman, marshal, or other officer, representative or employee of the State of Oklahoma, in the performance of any act done or to be done in connection with the prosecution of such proceeding or proceedings.

Petitioner, The State of Oklahoma, further prays that, upon leave being granted petitioner to file this petition, an alternative writ of prohibition at once issue out of this honorable court, directed to said respondents, The Circuit Court of the United States for the Eastern District of Oklahoma and Ralph E. Campbell, district judge of said district, sitting as judge of said Circuit Court, prohibiting them and each of them in manner and form as specifically prayed by petitioner in the preceding paragraph of this prayer, until

some certain future day, to be fixed by this honorable court, and expressed in said alternative writ, upon which said day said respondents may appear and show cause, if any they have, why said alternative writ of prohibition should not be made perpetual. But if this honorable court should hold that, upon leave being granted petitioner, The State of Oklahoma, to file this petition, such alternative writ of prohibition ought not to issue, then petitioner, The State of Oklahoma, prays for a rule of this honorable court, directed to said respondents, The Circuit Court of the United States for the Eastern District of Oklahoma and Ralph E. Campbell, district judge of said district, sitting as judge of said Circuit Court, and each of them, to show cause, if any they have, before this honorable court, at Washington, on a certain future day to be fixed by this honorable court, and expressed in said rule, why a writ of prohibition should not be granted as prayed by petitioner, The State of Oklahoma, in this petition.

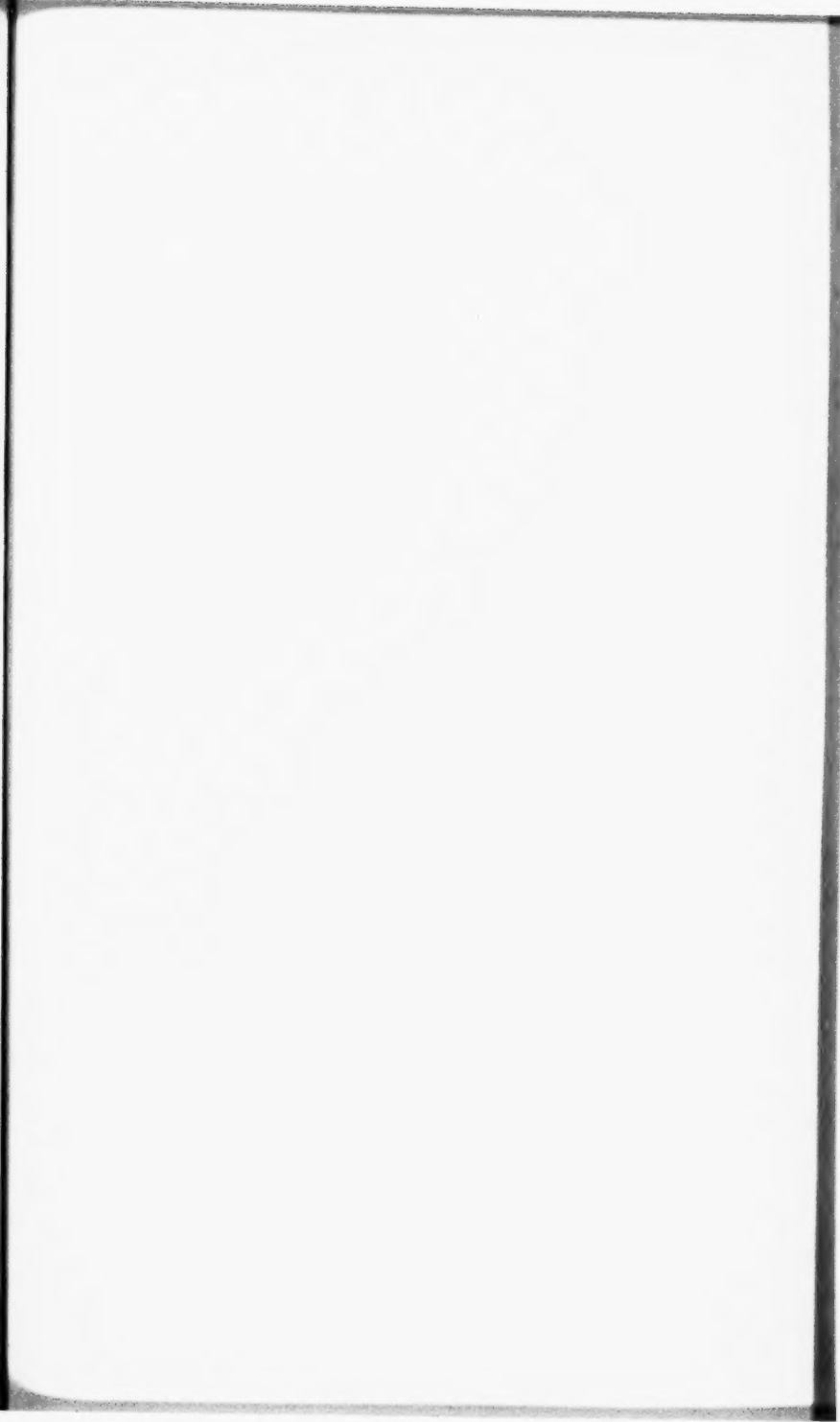
And petitioner, The State of Oklahoma, prays for all such further relief as in law and equity it may be entitled to in the premises.

THE STATE OF OKLAHOMA,
By C. N. HASKELL, *Governor.*
FRED S. CALDWELL,
Counsel to the Governor and
Attorney for the Petitioner.

Attest:

[SEAL.] BILL CROSS,
Secretary of State.

[Endorsed:] No. —. The State of Oklahoma, one of the United States of America, by Charles N. Haskell, Governor and Supreme Executive Officer thereof, Petitioner, *vs.* The Circuit Court of the United States for the Eastern District of Oklahoma and Ralph E. Campbell, the District Judge of said District, sitting as Judge of said Circuit Court, Respondents. Petition for Writ of Prohibition.





SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No **10**, Original.

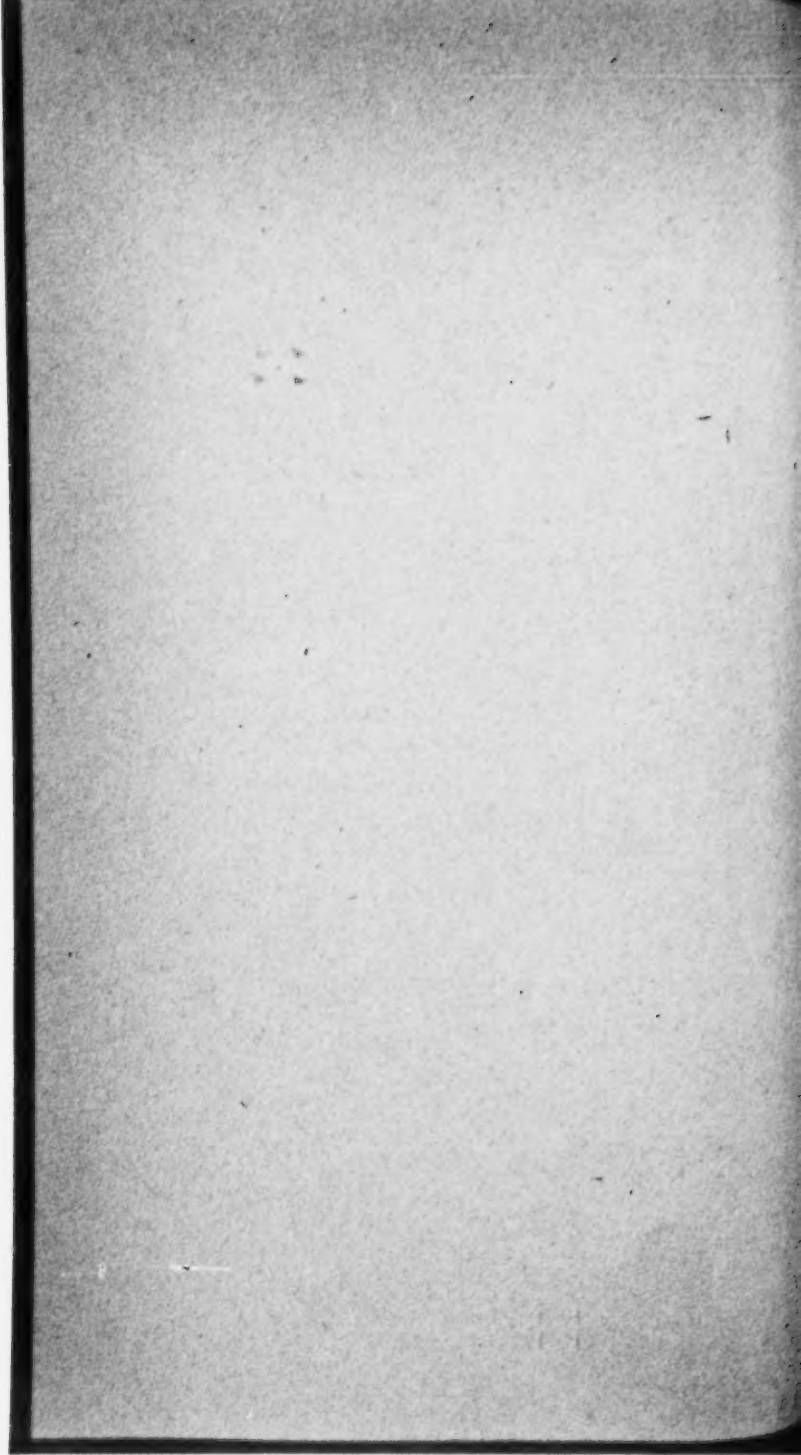
EX PARTE: IN THE MATTER OF THE STATE OF
OKLAHOMA, By CHARLES N. HASKELL, Gov-
ERNOR, PETITIONER.

**PETITION FOR WRIT OF PROHIBITION TO THE
CIRCUIT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF OKLAHOMA.**

FRED S. CALDWELL,
Attorney for Petitioner.

JOSEPH W. BAILEY,
Of Counsel.

West



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. , Original.

THE STATE OF OKLAHOMA, ONE OF THE UNITED STATES OF AMERICA, BY CHARLES N. HASKELL, GOVERNOR AND SUPREME EXECUTIVE OFFICER THEREOF, PETITIONER,

vs.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA AND JOHN H. COTTERAL, THE DISTRICT JUDGE OF SAID DISTRICT, SITTING AS JUDGE OF SAID CIRCUIT COURT, RESPONDENTS.

PETITION FOR WRIT OF PROHIBITION.

To the Honorable Melville W. Fuller, Chief Justice of the United States, and the Honorable Associate Justices of the Supreme Court of the United States:

The petition of The State of Oklahoma, one of the United States of America, by Charles N. Haskell, its governor, su-

preme executive officer and chief magistrate, respectfully shows:

I.

That on the 16th day of November, 1907, pursuant to an act of Congress approved on the 16th day of June, 1906 (chapter 3335, U. S. Stats., 1905-6, part 1, p. 267), and entitled:

"An act to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States,"

petitioner was created and admitted into the Union, by proclamation of the President of the United States, on an equal footing with all other States of said Union; that said section 3 of said act of Congress of June 16, 1906, commonly called the "Enabling Act," contains, among other things, the following:

"And said convention shall provide in said constitution—

* * * * *

Second. That the manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within those parts of said State now known as the Indian Territory and the Osage Indian Reservation and within any other parts of said State which existed as Indian reservations on the first day of January, nineteen hundred and six, is prohibited for a period of twenty-one years from the date of the admission of said State into the Union, and thereafter until the people

of said State shall otherwise provide by amendment of said constitution and proper State legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale, and wine, contrary to the provisions of this section, or who shall, within the above-described portions of said State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from other parts of said State into the portions hereinbefore described, shall be punished, on conviction thereof, by fine not less than fifty dollars, and by imprisonment not less than thirty days for each offense: *Provided*, That the legislature may provide by law for one agency under the supervision of said State in each incorporated town of not less than two thousand population in the portions of said State hereinbefore described; and if there be no incorporated town of two thousand population in any county in said portions of said State, such county shall be entitled to have one such agency, for the sale of such liquors for medicinal purposes; and for the sale, for industrial purposes, of alcohol which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum not less than one thousand dollars, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of

liquor dealers by the United States, and the payment of such special tax by any person within the parts of said State hereinabove defined shall constitute *prima facie* evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the liquor is to be used, and no sale shall be made for medicinal purposes except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a *bona fide* prescription signed by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered, and the register thereof, together with the affidavits and prescriptions pertaining thereto, shall be open to inspection by any officer or citizen of said State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for treatment of disease which after his own personal diagnosis he shall deem to require such treatment, shall, upon conviction thereof, be punished for each offense by fine of not less than two hundred dollars or by imprisonment for not less than thirty days, or by both such fine and imprisonment; and any person connected with any such agency who shall be convicted of making any sale or other disposition of liquor contrary to these provisions shall be punished by imprisonment for not less than one year and one day. Upon the admission of said State into the Union these provisions shall be immediately enforceable in the courts of said State."

That section 22 of said Enabling Act provides:

"That the constitutional convention provided for herein shall, by ordinance irrevocable, accept the terms and conditions of this act."

II.

Petitioner further shows that, pursuant to said section 22 of said Enabling Act, it was ordained by the constitutional convention, which convened pursuant to the provisions of said Enabling Act and framed petitioner's constitution, as follows:

"Be it ordained by the constitutional convention for the proposed State of Oklahoma, that said constitutional convention do, by this ordinance irrevocable, accept the terms and conditions of an act of the Congress of the United States, entitled, 'An act to enable the people of Oklahoma and the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States,' approved June the sixteenth, Anno Domini, nineteen hundred and six."

Petitioner further shows that sections 1 and 7 of article I of its constitution are as follows:

"SECTION 1. The State of Oklahoma is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land.

"SECTION 7. The manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within those parts

of the State, heretofore known as the Indian Territory and the Osage Indian reservations, and within any other parts of the State which existed as Indian reservations on the first day of January, nineteen hundred and six, is prohibited for a period of twenty-one years from the date of the admission of the State into the Union, and thereafter until the people of the State shall otherwise provide by amendment of this constitution and proper State legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale, and wine, contrary to the provisions of this section, or who shall, within the above-described portions of the State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from other parts of the State into the portions hereinbefore described, shall be punished, on conviction thereof, by fine not less than fifty dollars and by imprisonment not less than thirty days for each offense: *Provided*, That the legislature may provide by law for one agency under the supervision of the State in each incorporated town of not less than two thousand population in the portions of the State hereinbefore described; and if there be no incorporated town of two thousand population in any county in said portions of the State, such county shall be entitled to have one such agency, for the sale of such liquors for medicinal purposes; and for the sale, for industrial purposes, of alcohol which shall have been denaturalized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed

an approved bond, in a sum not less than one thousand dollars, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the parts of the State hereinabove defined shall constitute *prima facie* evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the liquor is to be used, and no sale shall be made for medicinal purposes except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a *bona fide* prescription signed by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered, and the register thereof, together with the affidavits and prescriptions pertaining thereto, shall be open to inspection by any officer or citizen of the State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for treatment of disease which, after his own personal diagnosis, he shall deem to require such treatment, shall, upon conviction thereof, be punished for each offense by fine of not less than two hundred dollars, or by imprisonment; and any person connected with any such agency, who shall be convicted of making any sale or other disposition of liquor contrary to these provisions, shall be punished by imprisonment for not less than one year and one day. Upon the admission of the State into the Union these provisions shall be immediately enforceable in the courts of the State."

Petitioner further shows that section 30 of article II of its constitution provides:

"SEC. 30. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches or seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, describing as particularly as may be the place to be searched and the person or thing to be seized."

Petitioner further shows that section 1, article VII, of its constitution provides:

"SECTION 1. The judicial power of this State shall be vested in the senate, sitting as a court of impeachment, a supreme court, district courts, county courts, courts of justices of the peace, municipal courts, and such other courts, commissions or boards, inferior to the supreme court, as may be established by law."

Petitioner further shows that section 1, article XV, of its constitution provides:

"SECTION 1. Senators and representatives and all judicial, State, and county officers shall, before entering upon the duties of their respective offices, take and subscribe to the following oath or affirmation:

"I, do ———, solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity; that I have not paid, or contributed, either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not knowingly, violated any election law of the

State, or procured it to be done by voters in my behalf; that I will not, knowingly, receive directly or indirectly, any money or other valuable thing, for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law, and I further swear (or affirm) that I will not receive, use, or travel upon any free pass or on free transportation during my term of office.' "

Petitioner further shows that at the time its constitution was submitted to a vote of its people for their approval or rejection there was submitted a separate article providing for State-wide prohibition, the same to become a part of petitioner's constitution if approved by a majority of the qualified voters voting thereon, and that at said election said prohibition article obtained a majority of the votes cast thereon and thereby became and is a part of petitioner's constitution; that said prohibition article is as follows:

"The manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within this State, or any part thereof, is prohibited for a period of twenty-one years from the date of the admission of this State into the Union, and thereafter until the people of the State shall otherwise provide by amendment of this constitution and proper State legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale, and wine, within this State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from one place within this State to another place therein, except the conveyance of a lawful purchase as herein authorized, shall be punished, on conviction thereof, by fine not

less than fifty dollars and by imprisonment not less than thirty days for each offense: *Provided*, That the legislature may provide by law for one agency under the supervision of the State in each incorporated town of not less than two thousand population in the State; and if there be no incorporated town of two thousand population in any county in this State, such county shall be entitled to have one such agency, for the sale of such liquors for medicinal purposes; and for the sale, for industrial purposes, of alcohol which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum not less than one thousand dollars, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the State shall constitute *prima facie* evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the liquor is to be used, and no sale shall be made for medicinal purposes, except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a *bona fide* prescription signed by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered, and the register

thereof, together with the affidavits and prescription pertaining thereto, shall be open to inspection by any officer or citizen of the State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for treatment of disease which after his own personal diagnosis he shall deem to require such treatment, shall, upon conviction thereof, be punished for each offense by fine of not less than two hundred dollars or by imprisonment for not less than thirty days, or by both such fine and imprisonment; and any person connected with any such agency who shall be convicted of making any sale or other disposition of liquor contrary to these provisions shall be punished by imprisonment for not less than one year and one day. Upon the admission of this State into the Union these provisions shall be immediately enforceable in the courts of the State: *Provided*, That there shall be submitted separately, at the same election at which this constitution is submitted for ratification or rejection, and on the same ballot, the foregoing article—entitled ‘Prohibition,’ on which ballot shall be printed FOR STATE-WIDE PROHIBITION and AGAINST STATE-WIDE PROHIBITION: *And provided further*, That, if a majority of the votes cast for and against State-wide prohibition are for State-wide prohibition, then said article—shall be and form a part of this constitution and be in full force and effect as such, as provided therein, but, if a majority of said votes shall be against State-wide prohibition, then the provisions of said article shall not form a part of this constitution, and shall be null and void.”

III.

Petitioner further shows the following are, and at all times hereinafter mentioned were, among others, its laws, which said laws at all times hereinafter mentioned were, and now are, in full force, operation, and effect, to wit:

SEC 4180 OF THE 1909 COMP. LAWS OF OKLA.—
“It shall be unlawful for any person, individual or corporate, to manufacture, sell, barter, give away, or otherwise furnish except as in this act provided, any spirituous, vinous, fermented or malt liquors, or any imitation thereof or substitute therefor; or to, manufacture, sell, barter, give away, or otherwise furnish any liquors or compounds of any kind or description whatsoever, whether medicated or not, which contain as much as one-half of one per centum of alcohol measured by volume, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States; or to ship or in any way convey such liquor from one place within this State to another place therein except the conveyance of a lawful purchase as herein authorized; or to solicit the purchase or sale of any such liquors, either in person or by sign, circular, letter, card, price-list, advertisement or otherwise, or to distribute, publish or display any advertisement, sign or notice where any such liquor may be manufactured, bartered, sold, given away, or otherwise furnished, or to have the possession of any such liquors with the intention of violating any of the provisions of this act. A violation of any provisions of this section shall be a misdemeanor, and shall be punished by a fine of not less than fifty dollars nor more

than five hundred dollars and by imprisonment for not less than thirty days, nor more than six months; provided, however, that the provisions of this act shall not apply to the manufacture and sale of unfermented cider and wine made from apples, grapes, berries or other fruit grown in this State, and to the use of wine for sacramental purposes in religious bodies."

SEC. 4181 OF THE 1909 COMP. LAWS OF OKLA.—
 "The payment of the special tax required of liquor dealers by the United States by any person within this State, except local agents appointed as hereinbefore provided, shall constitute *prima facie* evidence of an intention to violate the provisions of this act."

SEC. 4182 OF THE 1909 COMP. LAWS OF OKLA.—
 "Every person who shall within this State, directly or indirectly, keep or maintain by himself, or by associating or combining with others, any clubroom or other place in which any liquor, the sale of which is prohibited by this act, is received or kept for the purpose of selling, bartering, giving away, or otherwise furnishing, or for distribution or division among the members of any club or association by any means whatsoever, and every person who shall sell, barter, give away or otherwise furnish, distribute or divide any such liquors so received or kept shall be guilty of a misdemeanor."

SEC. 4184 OF THE 1909 COMP. LAWS OF OKLA.—
 "If it shall be made to appear to any judge of the district or county court or justice of peace that there is probable cause to believe that liquors are being manufactured, sold, bartered, given away, or otherwise furnished, or are being kept for the purpose of

selling, bartering, giving away, or otherwise furnishing liquors in violation of this act, such judge or magistrate shall issue a warrant directed to any officer of the county whom the complainant may designate, having the power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant, and to seize all such liquors there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away, or otherwise furnishing of such liquors, and safely keep the same, and to make return within three days of said warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession the same was found, if any, and if no person be found in the possession of said property, his return shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such liquors, furniture or fixtures so seized, and if no person be found in the possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same are found."

SEC. 4185 OF THE 1909 COMP. LAWS OF OKLA.—
 "Upon the return of such warrant as provided in the next preceding section, the magistrate or judge shall fix a time, not less than ten days nor more than thirty days thereafter, for hearing of said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof was used in violation of any of the provisions of this act. At such hearing, any party claiming an interest in any such property, may appear and be heard, and if upon such hearing it shall appear that any property so seized was knowingly used, or permitted to be used,

in violation of any provision of this act, the same shall be adjudged forfeited by the State, and shall be delivered to the custody of the superintendent, to be disposed of under the provisions of this act. If upon such hearing it shall appear that any property so seized was not kept or used for an unlawful purpose, or if any person shall show that he is the owner of any furniture, fixtures or other property seized under such warrant, and that the same, or any part thereof, were unlawfully used without his knowledge or consent, the same shall be returned to its lawful owner."

SEC. 4187 OF THE 1909 COMP. LAWS OF OKLA.—
 "No such warrant shall issue but upon probable cause, supported by oath or affirmation describing as particularly as may be the place to be searched, or the person or thing to be seized."

SEC. 4189 OF THE 1909 COMP. LAWS OF OKLA.—
 "When a violation of any provision of this act shall occur in the presence of any sheriff, constable, marshal or other officer having power to serve criminal process, it shall be the duty of such officer having power, without warrant, to arrest the offender and seize the liquor, bars, furniture, fixtures, vessels, and appurtenances thereunto belonging so unlawfully used, and to take the same immediately before the court or judge having jurisdiction in the premises, and there make complaint, under oath, charging the offense so committed, and he shall also make return, setting forth a particular description of the liquor and property seized, and of the place where the same was so seized, whereupon the court or judge shall issue a warrant commanding and directing the officer to hold the property so seized in his possession until discharged by due process of law, and such property

shall be held and a hearing and adjudication on said return had in like manner as if the seizure had been made under a warrant therefor."

SEC. 4193 OF THE 1909 COMP. LAWS OF OKLA.—
 "All places where liquors of any kind are manufactured, sold, bartered, given away or otherwise furnished in violation of any of the provisions of this act, are hereby declared to be public nuisances and shall be abated in the manner provided by law at the suit of any citizen of the State."

SEC. 4198 OF THE 1909 COMP. LAWS OF OKLA.—
 "It shall be the duty of the county attorneys in their respective counties diligently to attend all inquisitions held under the provisions of this act and diligently to prosecute all violations, of this act, of which they may have, or can obtain, knowledge, and to bring all suits and actions for the recovery of fines, penalties and forfeitures provided for herein; and any county attorney neglecting or refusing or failing to perform any duty required by the provisions of this act may be removed from office as hereinafter provided."

SEC. 4203 OF THE 1909 COMP. LAWS OF OKLA.—
 "All sheriffs, constables, marshals and police officers, and all county and city attorneys, shall diligently enforce all the provisions of this act. If any such officer shall fail or refuse to do or perform any duty required by the provisions of this act, he shall be removed from office as herein provided." * * *

SEC. 4204 OF THE 1909 COMP. LAWS OF OKLA.—
 "The Governor shall have power to appoint an attorney who shall have been a resident in this State for at least two years and shall have been a lawyer li-

censed by some court of record for at least five years, who shall be known as counsel for the Governor. He shall, under the direction of the Governor, assist in enforcing the provisions of this act, and the other laws of the State, and shall perform such other duties as the Governor may, from time to time require. He shall have all the powers of county attorneys in their respective counties. He shall hold office during the pleasure of the Governor, and shall give bond, to be approved by him, conditioned for the faithful discharge of his duties, in the sum of three thousand dollars (\$3,000) and shall receive a salary, to be fixed by the Governor of not more than twenty-five hundred dollars (\$2,500) per annum, payable monthly: Provided, that in lieu of, or in addition to appointing such attorney, the Governor may call upon the Attorney General or his assistant to perform such service."

SEC. 6254 OF THE 1909 COMP. LAWS OF OKLA.—
 "He (the sheriff) shall execute every summons, order or other process, and return the same as required by law; and if he fail to do so, unless he make it appear to the satisfaction of the court that he was prevented by inevitable accident from so doing, he shall be amerced by the court in a sum not exceeding one thousand dollars, upon motion and ten days' notice, and shall be liable to the action of any person aggrieved by such failure."

SEC. 6446 OF THE 1909 COMP. LAWS OF OKLA.—
 "It shall be the duty of every constable to serve all warrants, writs, precepts, executions and other process to him directed and delivered, and, in all respects whatever, to do and perform all things pertaining to the office of constable."

IV.

Petitioner further shows that said sections 4184 and 4185, *supra*, of its 1909 Compiled Laws, the same being sections 5 and 6 of article III of chapter 69 of petitioner's Session Laws of 1907-8, have been passed upon and construed by petitioner's Supreme Court in the case of *State ex rel. Caldwell v. Hooker*, County Judge, 98 Pac., 964; that said decision of petitioner's said Supreme Court became and is a part and parcel of petitioner's laws, and that portion of said decision wherein said sections 4184 and 4185, *supra*, are passed upon and construed is as follows:

"Does said act violate the provisions of section 7, article 2 (Bunn's Ed., sec. 16), of the constitution of Oklahoma, or of the Fourteenth Amendment to the Constitution of the United States, in that no provision is made for any legal notice, constructive or otherwise, of the time and place, or the person or tribunal before whom the hearing shall be had to determine whether or not the property taken under the search warrant shall be forfeited? To invest a court with effectual jurisdiction in any case, the thing in controversy, or the parties to such action, must be subjected to the process of the court. Certain cases may proceed *in rem*, notice being taken rather of the thing in controversy than of the party concerned, and the process is to be served upon that which is the object of the action, without special reference to notice to the parties interested. In such proceedings *in rem* a substituted service may be provided by statute in such cases, in the form of a notice published in the public journals, or posted, as may be directed by statute, the mode being chosen with a view to bring it home, if possible, to the knowledge of the parties being affected, and to give them an opportunity to appear and defend, and the power

of the legislature to prescribe such notice and give it effect as process rests upon the necessity of the case, and has long been recognized and acted upon. Such notice however, is restricted, so as to enable the court to give effect to the proceeding so far as it is one *in rem*; but, whenever the *res* is disposed of, the authority of the court ceases, and such notice cannot be made available for additional purposes. When the legislature prescribes a kind of notice by which it is reasonably probable that the party proceeded against will be apprised of what is going on against him, and an opportunity is afforded him to defend, the courts will not exercise the power to pronounce the proceeding illegal. Cooley's Const. Lim. (7th ed.), pp. 580, 581, 582, 583; Borden *v.* State, 11 Ark., 519; 44 Am. Dec., 217; Empire State Bank, 18 N. Y., 215; Rockwell *v.* Nearing, 35 N. Y., 302; Happy *v.* Mosher *et al.*, 48 N. Y., 237; Hiller *v.* Burlington, etc., R. Co., 70 N. Y., 237; Eikenberry *v.* Edwards, 67 Iowa, 622; 25 N. W., 832; 56 Am. Rep., 360; Gilchrist *v.* Schmidling, 12 Kan., 272; Pennoyer *v.* Neff, 95 U. S., 743; 24 L. Ed., 565; Beard *et al.* *v.* Beard, 21 Ind., 321; Cupp *et al.* *v.* Commissioners *et al.*, 19 Ohio St., 181; Fisher *v.* McGirr, 1 Gray (Mass.), 1; 61 Am. Dec. 381.

"Under section 5, article 3 of the enforcing act, under certain conditions it is the duty of the judge or magistrate to issue a warrant, directed to any officer of the county, whom the complainant may designate, having power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant, and to seize all such liquors there found, together with the vessels in which they are contained, and all implements, furniture, and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away or otherwise furnishing of such liquors, and safely

keep the same, and to make return within three days of such warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession it was found, if any, and if no person be found in the possession of said property, his return should so state. Now, if such a warrant is served upon the owner or party in possession of such liquors, indicating and describing the premises in which same is contained, and authorizing the seizure of all liquors therein found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away, or otherwise furnishing of such liquors, can this court say that such notice would not reasonably inform the party in possession, or the interested party if he saw it posted, that his property had been seized? Section 5675, Wilson's Rev. & Ann. St. Okla., 1903.

"Section 6, article 3, of the enforcing act, provides that: 'Upon the return of such warrant as provided in the next preceding section, the magistrate or judge shall fix a time, not less than ten days nor more than thirty days thereafter, for hearing of said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof was used in violation of any of the provisions of this act. At such hearing any party claiming an interest in any such property, may appear and be heard, and if upon such hearing it shall appear that any property so seized was knowingly used, or permitted to be used, in violation of any provision of this act, the same shall be adjudged forfeited by the State, and shall be delivered to the custody of the superintendent, to be disposed of under the provisions of this act. If upon such hearing it shall appear that any property so seized was not kept or used for an unlawful

purpose, or if any person shall show that he is the owner of any such furniture, fixtures or other property seized under such warrant, and that the same, or any part thereof, were unlawfully used without his knowledge or consent, the same shall be returned to its lawful owners.' Section 4, par. 557, div. 8, c. 38, vol. 1 (2d ed., 1896), Starr & C. Ann. St. Ill., provides: 'If there is satisfactory evidence that any property stolen, embezzled, or obtained by false tokens or pretenses, or that any of the other things for which a search warrant may be issued, by the provisions of this act, are kept, concealed, prepared or used in a particular house or place, a warrant may be issued by two judges or justices of the peace, to authorize the search of such house or place in the night-time and to bring the property or things described in the warrant or summons, and the person in whose possession they are found, before either of the judges or justices who issued the warrant, or some other judge or justice of the peace of the county.' Section 7 (par. 560) of the same chapter and division provides: 'When an officer, in the execution of a search warrant, finds stolen or embezzled property, or seizes any of the other things for which a search is allowed by this act, all the property and things so seized shall be safely kept by direction of the judge, justice or court, so long as necessary for the purpose of being produced or used as evidence on any trial. As soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all the other things seized by virtue of such warrants shall be burnt, or otherwise destroyed, under the direction of the judge, justice or court.'

"In the case of *Gelnnon v. Britton*, 155 Ill., 232; 40 N. E., 598, the court said: 'Statutes of the character of those in question are enacted upon the theory

that the proceedings shall be against the thing or *in rem*. And the State and Federal courts abound in decided cases in which laws of this kind have been held constitutional and valid, where no service was had or contemplated, other than that upon or against the offending thing, and the person in whose possession it is found. In respect to the major part, if, indeed, not all, of the property of the character described in the act, except that denominated "stolen" or "embezzled," it would be practically impossible to find the owners, if any. When counterfeit or spurious coin, forged bank notes, and instruments or tools for making the same are confiscated by public officers, the owners are often unknown, if not in remote and distant parts. Owners of obscene and vulgar books, pamphlets, or pictures, who circulate or dispose of their goods secretly and in violation of law, are not readily found and identified with the goods, nor do either they or spurious coin makers hasten to claim rights of property in the things seized. Gambling tables, implements, and devices are not usual and customary subjects of property, and, if such articles chance to be seized by vigilant officers of the law, the owners are more difficult to locate and apprehend. Experience has shown that while the property, materials, and paraphernalia may be seized, and the immoral resort or rendezvous thus, perhaps, broken up, the proprietors, or those who engage in the immoral and nefarious business, are on the alert, and not infrequently evade, if they do not altogether escape, the penalties of the law. The object of the proceedings to be instituted under the statute is that the unlawful and immoral practice be stopped, by destroying implements, apparatus, materials, etc., with which it is carried on. The theory is, with respect to such property, that no one is

longer the owner of it. The moment that it is used and applied in the unlawful business it becomes liable to forfeiture; and, though the claimant may appear and claim, he has no greater rights in property so used than has any other person. That the business or traffic designated, in which the offensive property is used, is immoral and unlawful, and therefore a public nuisance, cannot be questioned. And for the promotion of the general welfare the State, under its police powers, has the undoubted right to adopt the most expeditious, inexpensive, and effective mode of abolishing and abating the same. That under the various acts of Congress goods and things are seized, condemned, and destroyed without service of process on the owner other than seizure of the goods and arrest of the person in whose possession they are found, and such statutes and proceedings under them regarded constitutional and valid, has been determined in many adjudicated cases in the Federal courts. *Boston Beer Co. v. Massachusetts*, 97 U. S., 25; 24 L. Ed., 989; *Bartemeyer v. Iowa*, 18 Wall., 129, 21 L. Ed., 929; *U. S. v. Distillery No. 28*, 6 Bliss., 484; Fed. Cas. No. 14,966; *Boyd v. U. S.*, 116 U. S., 616, 6 Sup. Ct., 524, 29 L. Ed., 746; *Stockwell v. U. S.*, 3 Cliff., 284; Fed. Cas. No. 13,466; *Locke v. U. S.*, 7 Cranch, 339, 3 L. Ed., 364; *The Luminary*, 8 Wheat., 407, 5 L. Ed., 647; *Henderson's Distilled Spirits*, 14 Wall., 44, 20 L. Ed., 815, and cases cited.

"The exercise of such power should be properly guarded, and every proper means adopted, in order to prevent abuses and infringements of the rights of the citizens under the Constitution. In that case the legislature required that not only the property, but also the person in whose possession it was found, should be brought before the court in order to ac-

quaint the parties who may be interested with the proceeding, and that they be given an opportunity to be heard, concerning the disposition that should ultimately be made of the property. The legislature of this State required that a copy of such warrant should be served upon the person or persons found in possession of any such liquors, furniture, or fixtures so seized, and if any person be not found in the possession thereof, a copy of said warrant shall be posted upon the door of the building or room wherein the same are found. The magistrate or judge in issuing the warrant is required to describe and designate the place or premises to be searched, directing that such liquors, together with the vessels in which they are contained, and all implements, furniture, and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away, or otherwise furnishing of such liquors shall be seized and safely kept, and to make return within three days of such warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession the same was found, if any, and if no person was found in the possession of said property the return should so state. Section 6 (paragraph 559), division 8, c. 38, Illinois Statutes, *supra*, provides that such officer shall make a return particularly specifying the property taken, and the place where and the person from whom same was taken. The warrant shows from what court or by what magistrate or judge it was issued. The provision is made that, after the return of said warrant, the magistrate or judge shall fix a time, not less than 10 days nor more than 30 days thereafter, for hearing said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof, was used in violation of

any provision of said act. This limitation upon the power of such judge or justice as to the time in which he may not act, and the prescribed time in which he is required to act, was evidently done with a view of allowing time in which the owner of such property might appear and claim same; and the requirements that action should be taken within 30 days would prevent this property, in the event it was not entitled to be destroyed or confiscated under the law, from being held and kept from him an indefinite length of time. The Legislature has seen fit to require this form of notice, which they in their discretion must have deemed sufficient for the summary purposes and objects of the act. It is the duty of the court to hold statutes constitutional and valid if it can consistently and reasonably be done; and, in view of this clearly established doctrine, we are of the opinion that such notice of the proceedings and a hearing of the matters involved, and in the light of the authorities, we do not feel that we would be justified in holding that the same is in conflict with section 7, article 2 (Bunn's Ed., sec. 16), of the Constitution."

And petitioner further shows that said sections 4184 and 4185, *supra*, of petitioner's 1909 Compiled Laws, were further passed upon and construed by petitioner's Supreme Court in the case of *State v. 18 Casks of Beer et al.*, 104 Pac., 1093; that said decision of petitioner's said Supreme Court so passing upon and construing said sections 4184 and 4185 of petitioner's said laws, became and is a part and parcel of petitioner's laws, and that in said decision petitioner's said Supreme Court held as follows:

"A citizen of Oklahoma having purchased intoxicating liquors in another State and caused the same to be transported to him as consignee in this State by an interstate shipment, the laws of this State by

virtue of the police power (Act of Congress, Aug. 8, 1890, c. 728, 26 Stat. at Large, 313) attach immediately after the consummation of the delivery by the carrier to the consignee. (a) Such consignee having received the actual and exclusive possession of such liquors from the carrier at its depot, and retaining such possession on its said premises with the purpose and the intention of selling and bartering the same contrary to the laws of this State, such liquors may be seized and confiscated under sections 5 and 6 of the Enforcing Act (Session Laws 1907-8, p. 605) before the same have been by said consignee conveyed from the carrier's premises to the consignee's residence, place of business or warehouse. (b) Such consignee having received the actual and exclusive possession of such liquor from the carrier at its depot, and retaining such possession on its said premises for his or his family's use, such liquors cannot be seized and confiscated under sections 5 and 6 of the Enforcing Act (Session Laws 1907-8, p. 605) either before or after the same have been conveyed from the carrier's premises to the consignee's residence."

V.

Petitioner further shows that its method of enforcing through its courts its prohibition laws hereinabove set forth, and of abating liquor nuisances found to exist within its borders, within the meaning of its said laws, is as follows:

Petitioner's district courts, county courts, and justice of peace courts are vested with jurisdiction of all actions against any particular quantity of intoxicating liquor for the purpose of determining whether or not said particular quantity of intoxicating liquor is an offending thing against petitioner's said laws, and therefore constitutes and is a public nuisance, within the purview and meaning of petitioner's

said laws hereinabove set forth; that all such actions are prosecuted by petitioner, The State of Oklahoma, directly, in its own name, against said particular quantity of intoxicating liquor as such offending thing; that all such actions are commenced by petitioner in its said courts in the following manner, to wit: Some person having knowledge of the facts appears before one of the judges of petitioner's district courts, or before one of the judges of petitioner's county courts, which said courts are courts of record, or before one of petitioner's justices of the peace, which said justices of the peace courts are not courts of record, and such person so appearing before such judicial officer makes a complaint in writing, and, supported by his oath or affirmation, which said complaint so sworn to describes as particularly as may be the place to be searched and the intoxicating liquor to be seized, and also recites facts, which, standing alone and undisputed, are sufficient to establish *prima facie* the existence of such intoxicating liquors as a liquor nuisance; that upon such sworn complaint, in writing, petitioner's said judicial officer, to whom the same is presented, judicially determines whether or not there is probable cause for the issuance of a warrant, pursuant to the terms and provisions of said sections 4184 and 4185, *supra*, of petitioner's said laws, and if petitioner's said judicial officer thereupon judicially determines that such probable cause exists, he thereupon causes to be instituted, in the respective judicial tribunal over which he presides, an action by this petitioner, The State of Oklahoma, against such intoxicating liquor so described in said complaint, and forthwith issues in said action a search and seizure warrant, pursuant to the terms and provisions of said sections 4184 and 4185, *supra*, of petitioner's said laws; and such search and seizure warrant is, by petitioner's said judicial officer so issuing the same, directed to one of the executive officers of said judicial tribunal over which said judicial officer presides, to wit, a constable or sheriff, or a duly constituted deputy of either, and such warrant is by

such judicial officer delivered to such executive officer of said judicial tribunal for service and execution; that petitioner's said sheriff or constable, or said duly constituted deputy of either, to whom such search and seizure warrant is so directed and delivered, takes the same and proceeds therewith to the place described therein, and by authority thereof seizes and takes possession of all intoxicating liquor there found which is described in said warrant, and petitioner's said officer so executing said warrant thereupon serves a copy of the same upon the person or persons found in possession of such intoxicating liquor, and if no person be found in possession thereof said officer posts a copy of such warrant on the door of the building or room or compartment or place where the said intoxicating liquor is found; that thereafter, and within three days from the issuance of such warrant, said officer makes due return thereof to petitioner's said judicial tribunal out of which the same issued, and in such return said officer shows all acts and things done by him thereunder, with a particular statement of all intoxicating liquors seized and of the person or persons in whose possession the same were found, if any, and if no person be found in possession of said intoxicating liquors his return so states; that upon such return of such warrant, in manner and form as hereinabove stated, petitioner's judicial officer who issued said warrant fixes a time not less than ten days nor more than thirty days thereafter for a hearing upon said return, and at such hearing petitioner's said judicial tribunal proceeds to hear and determine whether or not the intoxicating liquor so seized or any part thereof was a thing offending against petitioner's said laws, and was therefore a liquor nuisance. At such hearing any party claiming an interest in any such intoxicating liquor may appear before petitioner's said judicial tribunal and be heard, and if upon such hearing it shall appear or shall be shown that any such intoxicating liquor so seized was at the time of such seizure a shipment made to a person within petitioner's

borders from a place outside of petitioner's border, and had not been delivered by the interstate carrier, under the contract of interstate shipment, to the consignee at the place of destination, then, in that event, pursuant to the decision of petitioner's Supreme Court in the case of *State v. 18 Casks of Beer et al.*, *supra*, petitioner's said judicial tribunal forthwith orders and adjudges that such intoxicating liquor be returned to the person or persons so claiming it, on the ground that at the time it was seized it had not ceased to be interstate commerce within the meaning of subdivision 3, section 8, article I, of the Constitution of the United States, and had not arrived within petitioner's borders within the meaning of the act of Congress of August 8, 1890 (c. 728, 26 Stat., 313; U. S. Comp. St., 1901, p. 3177). Provided, however, that if it be shown and established at such hearing that said intoxicating liquor or any portion thereof was so shipped from a point outside petitioner's borders to a place within petitioner's borders, and that such act of shipment was performed in violation of section 3449 of the Revised Statutes of the United States, or in violation of any one or more of sections 238, 239, and 240 of the act of Congress of March 4, 1909 (35 Stat. L., 1136-7), or that said intoxicating liquor was "adulterated" or "misbranded," within the meaning of the act of Congress of June 30, 1906, ch. 3915, 34 St. L., 768, commonly known as the Pure Food and Drug Act, then as to all such liquor so shipped or "adulterated" or "misbranded" in violation of said acts of Congress, petitioner's said judicial tribunals hold said commerce clause of the Constitution of the United States, *supra*, to be inapplicable, on the ground that such intoxicating liquor is not and, under such circumstances, could not be made a legitimate subject of interstate commerce, and, therefore, as to all such liquor, petitioner's said judicial tribunals proceed regardless of the fact that the same may have been in the possession of an interstate common carrier undelivered under a contract of interstate shipment at the time the seizure was made.

VI.

Petitioner further shows that respondents herein The Circuit Court of the United States for the Western District of Oklahoma and John H. Cotteral, the district judge of said district, sitting as judge of said circuit court, have, in direct violation of the Eleventh Amendment to the Constitution of the United States and contrary to and in direct violation of section 720 of the Revised Statutes of the United States, assumed jurisdiction in certain suits in equity brought and now pending in said Circuit Court of the United States for the Western District of Oklahoma, to-wit: Equity Suit No. 276, entitled The Atchison, Topeka & Santa Fe Railway Company, complainant, *vs.* Fred Caldwell, Charles C. Post, and Roy D. Holcomb, respondents; and Equity Suit No. 329, entitled The Missouri, Kansas & Texas Railway Company, complainant, *vs.* Robert C. Lozier, Fred S. Caldwell, C. S. Wortman, Roy D. Holcomb, C. T. Warden, R. S. Moore, H. C. Berwick, and John Burrow, respondents; and Equity Suit No. 484, entitled Joseph Filler, complainant, *vs.* S. W. Stone, B. J. Waugh, William Murdock, S. W. Fenton, F. F. Cain, J. M. Hays, G. F. Caffey, W. J. Garrett, John Queenan, and H. D. Garrison, respondents; and Equity Suit No. 488, entitled William Swartz and D. Dreeban, partners, doing business under the name and style of The Cooke County Liquor Company, complainants, *vs.* Chas. N. Haskell, governor, S. W. Stone, acting dispensary agent, Fred S. Caldwell, counsel to the governor, John Hays, assistant counsel to the governor, G. F. Caffey, constable, W. J. Garrett, constable, John Queenan, constable, F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, respondents; and Equity Suit No. 489, entitled The O. F. Haley Company, a corporation, complainant, *vs.* Chas. N. Haskell, governor, S. W. Stone, acting dispensary agent, Fred S. Caldwell, counsel to the governor, John Hays, assistant counsel to the governor, G. F. Caffey, constable, W. J. Garrett,

constable, John Queenan, constable, F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, respondents; and Equity Suit No. 496, entitled J. T. S. Brown & Sons, a corporation, complainants, *vs.* Chas. N. Haskell, governor of the State of Oklahoma, S. W. Stone, superintendent of the State dispensary, Fred S. Caldwell, counsel to the governor of Oklahoma, John M. Hays, assistant counsel to the governor of Oklahoma, Samuel Calhoun, acting sheriff of Oklahoma county, Oklahoma, H. D. Garrison, the duly appointed and qualified sheriff of Oklahoma county, Oklahoma, John Hubatka, chief of police of Oklahoma City, Oklahoma, G. F. Caffey, W. J. Garrett, and John Queenan, constables for Oklahoma City, Oklahoma, and F. F. Cain, S. W. Fenton, Wm. Murdock, and the successors in office of each and every one of the above-named, respondents; and Equity Suit No. 511, entitled Thixton, Millett & Company, a corporation, complainant, *vs.* S. W. Stone, State dispensary agent, John Hays, assistant counsel to the governor, G. F. Caffey, constable, W. J. Garrett, constable, John Queenan, constable, F. F. Cain, S. W. Fenton, William Murdock, T. J. Brown, and A. S. Peacock, respondents.

Petitioner further shows that the relief sought in each of said suits hereinabove referred to is the staying of proceedings in petitioner's said courts, which said proceedings are instituted and prosecuted by petitioner in its said courts pursuant to the terms and provisions of said sections 4184 and 4185, *supra*, of petitioner's said laws, and in manner and form as hereinabove set forth in section V of this petition, and to enjoin this petitioner, The State of Oklahoma, from prosecuting any action in its said courts, under and pursuant to said sections 4184 and 4185, *supra*, of petitioner's said laws, against any intoxicating liquors, in all cases where it may become necessary to try and determine any one or more of the following issues, to wit:

(a) The issue as to whether or not the particular intoxicating liquor in question was, at the time of its seizure, a

bona fide shipment made to a person within petitioner's borders from a place outside of petitioner's borders, which said shipment had not been delivered by the interstate carrier under the contract of interstate shipment to the consignee at the place of destination.

(b) The issue as to whether or not the particular intoxicating liquor in question had been shipped from a point outside of petitioner's borders to a place within petitioner's borders in violation of section 3449 of the Revised Statutes of the United States.

(c) The issue as to whether or not the particular intoxicating liquor in question had been shipped from a place outside of petitioner's borders to a place within petitioner's borders in violation of any one or more of sections 238, 239, and 240 of the act of Congress of March 4, 1909 (35 Stat. L., 1136-7).

(d) The issue as to whether or not the particular intoxicating liquor in question, although shipped from a place outside of petitioner's borders to a place within petitioner's borders and in the possession of the interstate carrier, undelivered under the contract of interstate shipment at the time the seizure was made, is "adulterated" or "misbranded" within the meaning of the act of Congress of June 30, 1903, chapter 3915, 34 Stat. L., 768, commonly known as the Pure Food and Drug Act.

Petitioner further shows that the respondents herein, The Circuit Court of the United States for the Western District of Oklahoma and John H. Cotteral, the district judge of said district, sitting as judge of said Circuit Court, acting in excess of and wholly beyond the power and jurisdiction conferred upon them by the laws of the United States, and in direct violation of said section 720 of the Revised Statutes of the United States, and in direct violation of said Eleventh Amendment to the Constitution of the United States, in manner and form hereinabove alleged, have assumed and undertaken to give and extend to the complainants, in each of said several suits hereinabove referred to, said relief so

sought therein by said complainants; and to the end of thus granting and affording unto said complainants, in each of said suits hereinabove referred to, such relief said respondents, The Circuit Court of the United States for the Western District of Oklahoma and John H. Cotteral, district judge of said district, sitting as judge of said Circuit Court, have done indirectly that which, by the terms of said Eleventh Amendment to the Constitution of the United States and by said section 720 of the Revised Statutes of the United States, they are expressly prohibited doing directly, in that in each of said suits hereinabove referred to they have issued divers and sundry pretended restraining orders, pretended temporary injunctions, and pretended injunctions against divers and sundry of petitioner's public officers who are expressly charged with official duties in the matter of enforcing petitioner's prohibition laws hereinabove referred to, and particularly against the following of petitioner's said public officers, to wit: S. W. Stone, petitioner's agency superintendent, appointed by its Governor pursuant to section 4156 of the 1909 Comp. Laws of Oklahoma, which said superintendent is clothed with power and authority and charged with the performance of certain public duties, as provided by chapter 61 of said 1909 Comp. Laws of Oklahoma; Fred S. Caldwell, counsel to the Governor, and all his assistants, which said counsel to the Governor is clothed with power and authority and charged with the performance of certain public duties, as provided by article III, chapter 61, of said 1909 Comp. Laws of Oklahoma, and particularly by section 4204 of said laws, *supra*, and all of petitioner's employees in said State agency department and in said counsel to the Governor's department who are employed in said departments for and on behalf of petitioner by said S. W. Stone; agency superintendent, and said Fred S. Caldwell, counsel to the Governor, respectively, upon the direction and approval of petitioner's Governor, Charles N. Haskell; all of petitioner's county attorneys in the several counties being and situate in said western district of Oklahoma, which said

county attorneys are petitioner's public prosecutors and are particularly charged with a diligent enforcement of petitioner's prohibition laws hereinabove set forth; petitioner's sheriffs and all their deputies and under sheriffs in the several counties being and situate in said western district of Oklahoma; petitioner's constables and all their deputies in the several municipal townships being and situate in said western district of Oklahoma, and all police officers who are peace officers having power to serve criminal process and who are peace officers of petitioner's several municipalities throughout said western district of Oklahoma; that by the terms of said pretended restraining orders, said pretended temporary injunctions, and said pretended injunctions so issued against petitioner's said public officers by said respondents, The Circuit Court of the United States for the Western District of Oklahoma and John H. Cotteral, district judge of said district, sitting as judge of said Circuit Court, all proceedings in petitioner's said courts instituted and prosecuted by petitioner, The State of Oklahoma, pursuant to the terms and provisions of said sections 4184 and 4185, *supra*, of petitioner's laws, and in manner and form as hereinabove set forth in section V of this petition, are stayed, enjoined, and prohibited, and petitioner's said public officers are, by the terms of said pretended restraining orders, said pretended temporary injunctions, and said pretended injunctions, ordered and commanded not to do or in any manner perform the official duties required by petitioner's said laws to be done and performed by them in the matter of such proceedings in petitioner's said courts, and more particularly are petitioner's said sheriffs, deputy sheriffs, constables, deputy constables, and police officers thereby ordered and commanded not to serve or execute any search and seizure warrant issued out of any of petitioner's courts or by any of petitioner's judicial officers, in manner and form hereinabove set forth in section V of this petition, in any case where a seizure of the intoxicating liquor described

in such warrant would raise, at the hearing upon the return of said warrant, any one or more of the issues hereinabove stated and set forth in paragraphs (a), (b), (c), and (d) hereof; and such order and command so made by respondents, The Circuit Court of the United States for the Western District of Oklahoma and John H. Cotteral, the district judge of said district, sitting as judge of said Circuit Court, have been made under threat of punishment as for a contempt of said court for any violation thereof or disobedience thereto.

Petitioner further shows that notwithstanding the fact that said pretended restraining orders, said pretended temporary injunctions and said pretended injunctions so issued by respondents, The Circuit Court of the United States for the Western District of Oklahoma and John H. Cotteral, the district judge of said district, sitting as judge of said Circuit Court, against petitioner's said public officers in manner and form hereinabove set forth, are wholly without jurisdiction and void, by reason of the fact that they were issued in violation of said 11th Amendment to the Constitution of the United States, and in direct violation of Section 720 of the Revised Statutes of the United States, still said respondents, The Circuit Court of the United States for the Western District of Oklahoma and John H. Cotteral, the district judge of said district, sitting as judge of said Circuit Court, are constantly insisting upon a strict compliance therewith, and are constantly demanding of petitioner's said public officers strict obedience thereto under penalty of punishment, as for a contempt of court; and that unless prohibited by proper writ issued from this honorable court, in manner and form hereinafter prayed by this petition, said respondents, The Circuit Court of the United States for the Western District of Oklahoma and John H. Cotteral, the district judge of said district, sitting as judge of said Circuit Court, will continue to so act in excess of and beyond the jurisdiction, judicial power and authority of said Circuit Court of the United States for the Western District of Oklahoma and the honor-

able judges thereof, by perpetuating said void and pretended restraining orders, temporary injunctions and injunctions, in that they will cause to be attached and punished, as for a contempt of court, any and all of petitioner's said public officers who proceed to do, discharge and perform their duties as such public officers of petitioner and thereby violate the terms of said void and pretended restraining orders, temporary injunctions and injunctions.

Petitioner further shows that by the wrongful acts of said respondents, The Circuit Court of the United States for the Western District of Oklahoma and John H. Cotteral, the district judge of said district, sitting as judge of said Circuit Court, in so issuing, perpetuating, and enforcing said void and pretended restraining orders, temporary injunctions and injunctions, in manner and form hereinabove set forth, this petitioner, The State of Oklahoma, has suffered and is suffering great and irreparable injury, for which said petitioner has no adequate remedy at law; that said acts of said respondents constitute and are an unlawful and unwarranted interference with petitioner, The State of Oklahoma, in the exercise of its governmental functions and sovereign powers in connection with the enforcement of petitioner's said prohibition laws, a portion of which said prohibition laws the Congress of the United States, by imperative mandate expressed in said Enabling Act, hereinabove referred to, demanded should be a part and parcel of petitioner's laws for a period of twenty-one years.

Wherefore, the premises aforesaid duly considered, petitioner, The State of Oklahoma, prays the issuance of a writ of prohibition from this honorable court directed to said respondents, The Circuit Court of the United States for the Western District of Oklahoma and John H. Cotteral, the district judge of said district, sitting as judge of said Circuit Court, prohibiting them, and each of them, from in any manner, either directly or indirectly, enforcing or attempting to enforce in any manner or to any degree whatsoever.

against petitioner's said public officers, and particularly, against petitioner's said State Agency Superintendent, his agents, representatives, and employees; petitioner's said Counsel to the Governor, his assistants, agents, representatives, and employees; petitioner's said county attorneys throughout said western district of Oklahoma, their assistants, representatives, and employees; petitioner's said county sheriffs throughout said western district of Oklahoma, their under sheriffs, deputy sheriffs, assistants, representatives, and employees; petitioner's said constables throughout said western district of Oklahoma, their deputies, assistants, and employees; and, against petitioner's peace officers throughout said western district of Oklahoma, who are police officers of petitioner's several municipalities, being and situate in said western district of Oklahoma, said pretended restraining orders, temporary injunctions and injunctions so issued and now pending in said equity suits numbered 576, 1225, 1232, 1235, 1236, 1237, 1242, 1266, and 1267, respectively; and prohibiting said respondents, The Circuit Court of the United States for the Western District of Oklahoma, and John H. Cotteral, district judge of said district, sitting as judge of said Circuit Court, from in any manner whatsoever staying or interfering with the prosecution and conduct of any proceeding or proceedings in any court or courts of the State of Oklahoma, which said proceeding or proceedings are instituted and prosecuted by petitioner, The State of Oklahoma, in its said courts pursuant to the terms and provisions of said sections 4184 and 4185 of its 1909 Comp. Laws, by restraining, enjoining, or in any manner whatsoever interfering with any prosecuting attorney, sheriff, constable, policeman, marshal, or other officer, representative or employee of the State of Oklahoma, in the performance of any act done or to be done in connection with the prosecution of such proceeding or proceedings.

Petitioner, The State of Oklahoma, further prays that, upon leave being granted petitioner to file this petition, an

alternative writ of prohibition at once issue out of this honorable court, directed to said respondents, The Circuit Court of the United States for the Western District of Oklahoma and John H. Cotteral, district judge of said district, sitting as judge of said Circuit Court, prohibiting them and each of them in manner and form as specifically prayed by petitioner in the preceding paragraph of this prayer, until some certain future day, to be fixed by this honorable court, and expressed in said alternative writ, upon which said day said respondents may appear and show cause, if any they have, why said alternative writ of prohibition should not be made perpetual. But if this honorable court should hold that, upon leave being granted petitioner, The State of Oklahoma, to file this petition, such alternative writ of prohibition ought not to issue, then petitioner, The State of Oklahoma, prays for a rule of this honorable court, directed to said respondents, The Circuit Court of the United States for the Western District of Oklahoma and John H. Cotteral, district judge of said district, sitting as judge of said Circuit Court, and each of them, to show cause, if any they have, before this honorable court, at Washington, on a certain future day to be fixed by this honorable court, and expressed in said rule, why a writ of prohibition should not be granted as prayed by petitioner, The State of Oklahoma, in this petition.

And petitioner, The State of Oklahoma, prays for all such further relief as in law and equity it may be entitled to in the premises.

THE STATE OF OKLAHOMA,
By C. N. HASKELL, *Governor.*
FRED S. CALDWELL,
Counsel to the Governor and
Attorney for the Petitioner.

Attest:

[SEAL.] BILL CROSS,
Secretary of State.

[Endorsed:] No. —. The State of Oklahoma, one of the United States of America, by Charles N. Haskell, Governor and Supreme Executive Officer thereof, Petitioner, *vs.* The Circuit Court of the United States for the Western District of Oklahoma and John H. Cotteral, the District Judge of said District, sitting as Judge of said Circuit Court, Respondents. Petition for Writ of Prohibition.

[5493]







IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. , Original.

THE STATE OF OKLAHOMA, ONE OF THE UNITED STATES OF AMERICA, BY CHARLES N. HASKELL, GOVERNOR AND SUPREME EXECUTIVE OFFICER THEREOF, PETITIONER,

vs.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, AND RALPH E. CAMPBELL, THE DISTRICT JUDGE OF SAID DISTRICT, SITTING AS JUDGE OF SAID CIRCUIT COURT, RESPONDENTS,

AND

No. , Original.

THE STATE OF OKLAHOMA, ONE OF THE UNITED STATES OF AMERICA, BY CHARLES N. HASKELL, GOVERNOR AND SUPREME EXECUTIVE OFFICER THEREOF, PETITIONER,

vs.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA, AND JOHN H. COTTERAL, THE DISTRICT JUDGE OF SAID DISTRICT, SITTING AS JUDGE OF SAID CIRCUIT COURT, RESPONDENTS,

SUGGESTIONS IN SUPPORT OF MOTIONS FOR LEAVE TO FILE PETITIONS.

Petitioner, State of Oklahoma, is entitled to the relief prayed for in its petition upon the following authorities:

Eleventh Amendment to the Constitution of the United States.

Section 720 of the Revised Statutes of the United States.

Freeman vs. Howe, 24 Howard, 451.

City Bank of New York vs. Skelton, 5 Fed. Cas. No. 2739.

Daly vs. Sheriff, 6 Fed. Cas. No. 3553.

Fisk vs. Union Pac. R. Co., 9 Fed. Cas. No. 4827.

Haynes vs. Carpenter, 91 U. S., 254.

Dial vs. Reynolds, 96 U. S., 340.

Hemsley vs. Myers, 45 Fed., 283.

Whitney vs. Wilder (C. C. A.), 54 Fed., 554.

American Association vs. Hurst (C. C. A.3), 59 Fed., 1.

Fenwick Hall Co. vs. Town of Old Saybrook, 66 Fed., 389.

In re Chetwood, 165 U. S., 460.

Baker vs. Ault, 78 Fed., 394.

Harkrader vs. Wadley, 172 U. S., 148.

Cœur d'Alene Ry. & Nav. Co. et al. vs. Spalding, 35 C. C. A., 295.

Leathe vs. Thomas, 97 Fed., 138.

Mills vs. Provident Life & Trust Co., 100 Fed., 344.

Starr vs. C. R. I. & P. Ry Co., 97 Fed., 138.

Ex parte Young, 209 U. S., 123, 52 Law Ed., 714.

13 L. R. A. (N. S.), 932, 28 Sup. Rept., 441.

State Corporation Commission of Virginia vs. Ry. Cos., 29 Sup. Rept., 68.

Farmers' Loan & Trust Co. *vs.* Lake St., etc., R. Co.,
177 U. S., 51, 20 Sup. Ct. Reporter, 568.

Arbuckle *vs.* Blackburn, 51 C. C. A., 122, 113 Fed.,
616, 65 L. R. A., 870.

Yick Wo *vs.* Crowley, 26 Fed., 207.

In re Ayres, 123 U. S., 443.

Fitts *vs.* McGhee, 172 U. S., 516, 19 Sup. Court
Rept., 272.

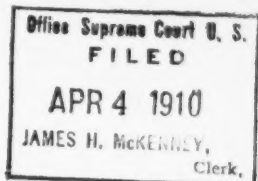
Respectfully submitted,

FRED S. CALDWELL,
Attorney for the State of Oklahoma.

JOSEPH W. BAILEY,
Of Counsel.

[Endorsed:] Suggestion in support of motion for leave
to file petition. Western Dist.





SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. ⁹~~18~~, Original.

**IN THE MATTER OF THE STATE OF OKLAHOMA,
BY CHARLES N. HASKELL, GOVERNOR, PETI-
TIONER.**

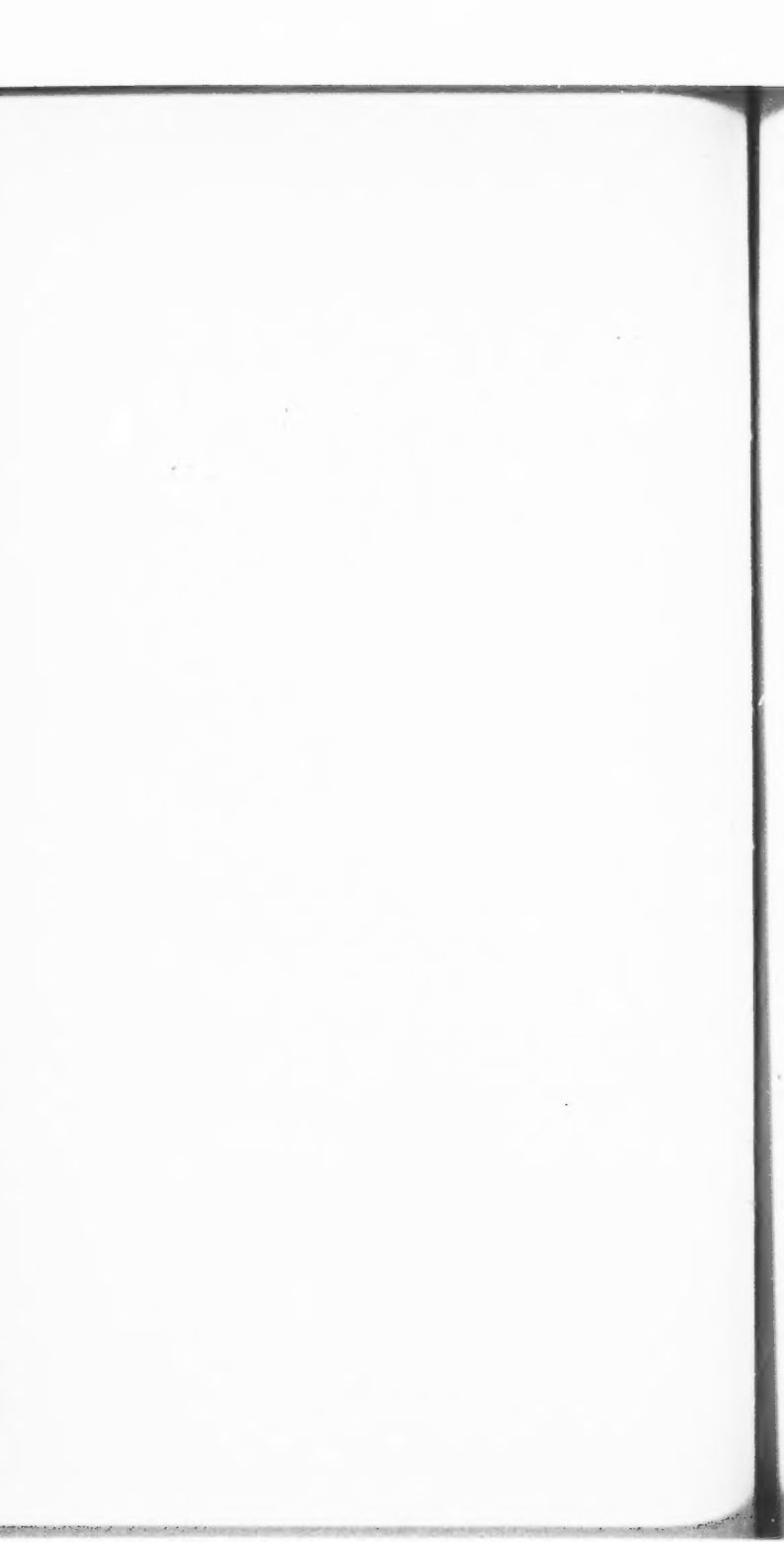
No. ¹⁰~~14~~, Original.

**IN THE MATTER OF THE STATE OF OKLAHOMA,
BY CHARLES N. HASKELL, GOVERNOR, PETI-
TIONER.**

**MOTION OF COUNSEL FOR THE PLAINTIFFS IN
THE CIRCUIT COURT FOR LEAVE TO APPEAR
AND FILE BRIEFS AND TO BE HEARD IN
ORAL ARGUMENT.**

**LAWRENCE MAXWELL,
JOSEPH S. GRAYDON,
E. G. McADAMS,**

Counsel.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 13, Original.

IN THE MATTER OF THE STATE OF OKLAHOMA,
BY CHARLES N. HASKELL, GOVERNOR, PETI-
TIONER.

No. 14, Original.

IN THE MATTER OF THE STATE OF OKLAHOMA,
BY CHARLES N. HASKELL, GOVERNOR, PETI-
TIONER.

MOTION OF COUNSEL FOR THE PLAINTIFFS IN THE CIRCUIT COURT FOR LEAVE TO APPEAR AND FILE BRIEFS AND TO BE HEARD IN ORAL ARGUMENT.

The undersigned, counsel for the plaintiffs in the circuit courts, whose jurisdiction and further proceedings is sought to be arrested by writs of prohibition from this court, respectfully ask leave to file a brief and to be heard in oral argument.

We are advised that the judges of the circuit court, the respondents herein having filed their returns to the rules to

show cause, will take no further part in these cases, and the applications for writs of prohibition will therefore be undefended unless we are permitted to file a brief and be heard in oral argument on behalf of the real parties in interest.

LAWRENCE MAXWELL,
JOSEPH S. GRAYDON,
E. G. McADAMS,

Counsel.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1909.

10
No. 10 Original.

**EX PARTE: IN THE MATTER OF THE STATE OF
OKLAHOMA, PETITIONER.**

RETURN TO RULE AND TRANSCRIPT OF RECORD.

(Copy of Order to Show Cause.)

Supreme Court of the United States, October Term, 1909.

No. 14. Original.

Ex Parte: In the Matter of THE STATE OF OKLAHOMA, by CHARLES N. HASKELL, Governor, Petitioner.

On Consideration of the Petition for Writ of Prohibition to the Circuit Court of the United States for the Western District of Oklahoma.

It is now here ordered by the court that cause be shown by the said Circuit Court *that cause be shown by the said Circuit Court* of the United States for the Western District of Oklahoma and Honorable John H. Cotteral, District Judge of said District, sitting as Judge of said Circuit Court, before this Court at the City of Washington on Monday, April 4th, 1910, at 12 o'clock noon of that day or as soon thereafter as counsel can be heard, why a writ of prohibition should not be granted as prayed in said petition.

February 28, 1910.

1 In the Supreme Court of the United States.

No. 14. Original.

Ex Parte: In the Matter of the STATE OF OKLAHOMA, by CHARLES N. HASKELL, Governor, Petitioner.

Return to Order to Show Cause.

To the Honorable the Supreme Court of the United States:

In compliance with the order of the said Honorable Court, of date February 19, 1910, (a copy of which is hereto attached), directing that cause be shown by the Circuit Court of the United States for the Western District of Oklahoma and the District Judge of said District, sitting as Judge of said Circuit Court, why a writ of prohibition should not be granted as prayed in the petition for said writ in said cause, the following return is respectfully submitted:

1. A certified transcript of the pleadings, files and orders (except of formal or immaterial character, such as bonds, process, exhibits etc.) in the several suits referred to in the petition, to-wit, numbers 276, 329, 484, 488, 489, 496 and 511, now pending in said Circuit Court, is hereunto annexed as a part of this return.

2. In connection with the foregoing transcript, and as a further return, it is deemed appropriate to add a statement of some of the more important considerations which have been regarded as sus-

taining the jurisdiction of the Court to entertain these suits and to make the orders therein.

The jurisdiction of the Circuit Court in these cases is supported in general by the averments in the pleadings of the complainants that the opposing parties are citizens of different states and that

the respective amounts in dispute exceed \$2,000.00; and
2 furthermore that the cases arise under the Constitution of the United States by involving acts of alleged interference with transactions in interstate commerce and the question of the right to protection of the same. The equity jurisdiction of the Court is invoked by the complainants on the ground of the necessity of relief to prevent irreparable injury and avoid a multiplicity of suits.

The pleadings disclose that the complainants allege transactions by way of shipments of intoxicating liquors from other states to points in Oklahoma, and assert the right to the transportation and delivery of the same to consignees in the State, as commodities of interstate commerce, and charge actual and threatened seizures thereof by the defendants before delivery within the State, not remediable at law. Wherefore, the amount in dispute being found sufficient, the jurisdiction of the Court was held to arise for the purpose of hearing and investigating the grievances complained of and any defense which might be interposed, and to grant or deny relief as the facts and the law might warrant. Although the defendants sought to justify their conduct upon the ground that they were State officers and represented the State in discharging their duties, the Court was of the opinion that jurisdiction existed to proceed, consistently with the Eleventh Amendment to the Federal Constitution.

The Court was bound to observe that provision of the Federal Constitution which commits to Congress the power to regulate interstate commerce, and to be governed by the force of authority that intoxicating liquors, like other commodities in which a right of traffic exists, are subjects of exchange, barter and sale, that the right to send and the act of sending intoxicating liquors from one state into another constitute interstate commerce, and that while a state may regulate and prohibit the manufacture and sale of such liquors within its limits and enforce its laws to that end, any state law which substantially interferes with or hampers such right is in conflict with the Constitution, and that the police power of a state does not attach

to an interstate shipment of liquors until its arrival at the
3 point of destination and its delivery to the consignee.

If the defendants were acting in accordance with any law of the State which authorized them to seize commodities of interstate commerce before delivery thereof at destination in the State, such law must be void for conflict with the Constitution and furnishes no immunity from suit, within the meaning of the Amendment. Or, if the State laws invoked by them are valid, but the defendants acted and proposed to act in excess of the authority thereby conferred upon them, they were not by virtue of the Amendment entitled to avail themselves of the defense that they represented the State and for that

reason were not amenable to suit. These principles were regarded as firmly settled by authority.

The provisions of the State Constitution upon the subject of intoxicating liquors do not in terms relate to interstate commerce, and the interpretation put thereon by the State Criminal Court of Appeals is that they have no such relation. *High v. State*, 101 Pac. 115. *Hudson v. State*, 101 Pac. 275. The same Court has held that the jurisdiction of the State by virtue of its prohibitory statutes does not apply to interstate shipments of liquors prior to delivery at destination in the State. *McCord v. State*, 101 Pac. 280. And the Supreme Court of the State has decided that the statutes of the State providing for the seizure of liquors apply after such delivery. *State v. Eighteen Casks of Beer*, 104 Pac. 1093. So that it appears that the defendants predicated their claim to exemption from suit upon valid laws not applicable to interstate commerce.

The question made upon the jurisdiction of the Court was regarded as one pertaining to the merits rather than to original jurisdiction, and as instituting the inquiry whether in the exercise of jurisdiction the defendants might be relieved of the suits on the ground that they represented the State. But it was believed that before the defendants could succeed with that defense, it was incumbent on them to justify their conduct under a valid law of the State and that this they could not do, if the liquors they were seeking to seize and confiscate were undelivered commodities of interstate commerce.

The defendants' objection to the jurisdiction of the Circuit Court seems to amount to this, that they might determine upon a course of continuing seizures of interstate shipments of liquors, and that, although it might be that the seizures would be destructive of rights secured by the Federal Constitution and no law of the State would be infringed with respect to the liquors, and the seizures would result in irreparable loss to the parties in interest and oblige them to engage in a multiplicity of suits to protect their rights, if the defendants should be sued in the Federal Court upon sufficient allegations for relief by injunction against such course, they could, by declaring in that Court that they were acting upon the authority of State laws successfully challenge its jurisdiction, and thereby accomplish the transfer of the whole power of inquiry into the subject of the State Courts whence the seizure would emanate from time to time. The view of the Circuit Court was that jurisdiction was shown to exist in that Court to make the inquiry, and that the objection that jurisdiction was assumed in these cases and the orders made therein in contravention of the Eleventh Amendment was unsound and predicated on a misconception of its meaning.

With respect to the objection founded on Section 720 of the Revised Statutes of the United States, it appears that the orders by their terms do not stay proceedings or direct the restoration of property, but restrain seizures. It was the opinion of the Circuit Court that the statute does not limit the federal judicial power so as to forbid injunctions against future proceedings. But aside from

this, if the orders were not erroneous, they do not affect the seizure of property subject to the police power of the State.

Finally, it should be added that the relief extended to the complainants was believed to be on principle in harmony with the cases of Scott v. Donald, 165 U. S., 107, and Vance v. Vandercook, 170 U. S. 438.

Having made the foregoing return, it is respectfully submitted whether the Circuit Court and the District Judge of said District as Judge of said Court should take any further proceedings
5 in the suits or any of them referred to by the petitioner and now pending in said Court.

Witness my hand, at Guthrie, Oklahoma, this 1st day of April, 1910.

JOHN H. COTTERAL,
United States District Judge.
Western District of Oklahoma.

5a
EXHIBIT TO RETURN TO RULE.

TRANSCRIPT OF RECORD.



INDEX TO TRANSCRIPT.

No. 276.

THE ATCHISON, TOPEKA & SANTA FE RY. CO.

v.

FRED CALDWELL ET AL.

	Original.	Print
Bill	6	11
Notice	13	15
Restraining order	17	18
Stipulation	18	19
Order on stipulation	19	20
Order	20	20
Temporary injunction	21	21
Answer	22	22
Answer and cross-complaint	27	25
Demurrer to cross-complaint	60	37
Order on demurrer	61	38
Replication	62	39
Replication	63	39

No. 329.

THE MISSOURI, KANSAS & TEXAS RY. CO.

v.

ROBERT E. LOZIER ET AL.

Bill	64	40
Motion for temporary injunction and restraining order	73	46
Restraining order	74	47
Answer	76	48
Answer and cross-complaint	84	53
Demurrer to answer and cross-complaint	122	65

No. 484.

JOSEPH FILLER

v.

S. W. STONE ET AL.

Bill	124	66
Petition for injunction	134	72
Restraining order	137	73
Motion for leave to amend	139	74
Order for leave to amend bill	140	75

	Original.	Print
Amended bill.....	141	75
Restraining order.....	146	79
Motion for leave to amend bill.....	148	80
Order for leave to amend.....	149	80
Amended bill.....	150	81
Order.....	151	82
Order.....	153	82
Motion for leave to amend.....	154	83
Order for leave to amend.....	155	83
Amended bill.....	156	84
Affidavits of complainant.....	158	85
Affidavits of defendants.....	165	90
Order of temporary injunction.....	166	91
Motion for citation.....	169	92
Demurrer.....	178	97
Order.....	180	99

5c

No. 488.

WILLIAM SWARTZ ET AL.

v.

CHARLES N. HASKELL ET AL.

Bill.....	181	99
Restraining order.....	194	107
Affidavits of complainant.....	196	108
Order.....	204	112
Order.....	205	113
Affidavits of complainant.....	206	113
Affidavits of defendants.....	214	117
Appearance of defendants.....	238	132
Order denying injunction.....	239	133
Amended bill.....	240	133
Notice and return.....	252	141
Order, temporary injunction.....	254	142
Demurrer to bill.....	257	143
Order submitting demurrer.....	259	145
Order overruling demurrer.....	260	145
Answer.....	261	146

No. 489.

THE O. F. HALEY COMPANY

v.

CHARLES N. HASKELL ET AL.

Bill.....	273	153
Restraining order.....	284a	160
Order.....	285	161
Order.....	286	162
Affidavits of complainant.....	287	162

	Original.	Print
Affidavits of complainant.....	301	169
Affidavits of defendants.....	312	174
Appearance of defendants.....	337	191
Order denying injunction.....	338	191
Amended bill	339	192
Notice and return.....	351	200
Order, temporary injunction.....	352	200
Demurrer to bill	354	202
Order on demurrer.....	356	203
Order overruling demurrer.....	357	203
Answer.....	358	204

No. 496.

J. T. S. BROWN & SONS

v.

CHARLES N. HASKELL ET AL.

Bill	370	211
Notice and return.....	387	221
Affidavits of complainant.....	390	223
Order, temporary injunction.....	397	226
Appearance of defendants.....	400	228
Demurrer to bill.....	401	228
Stipulation	404	230

5d

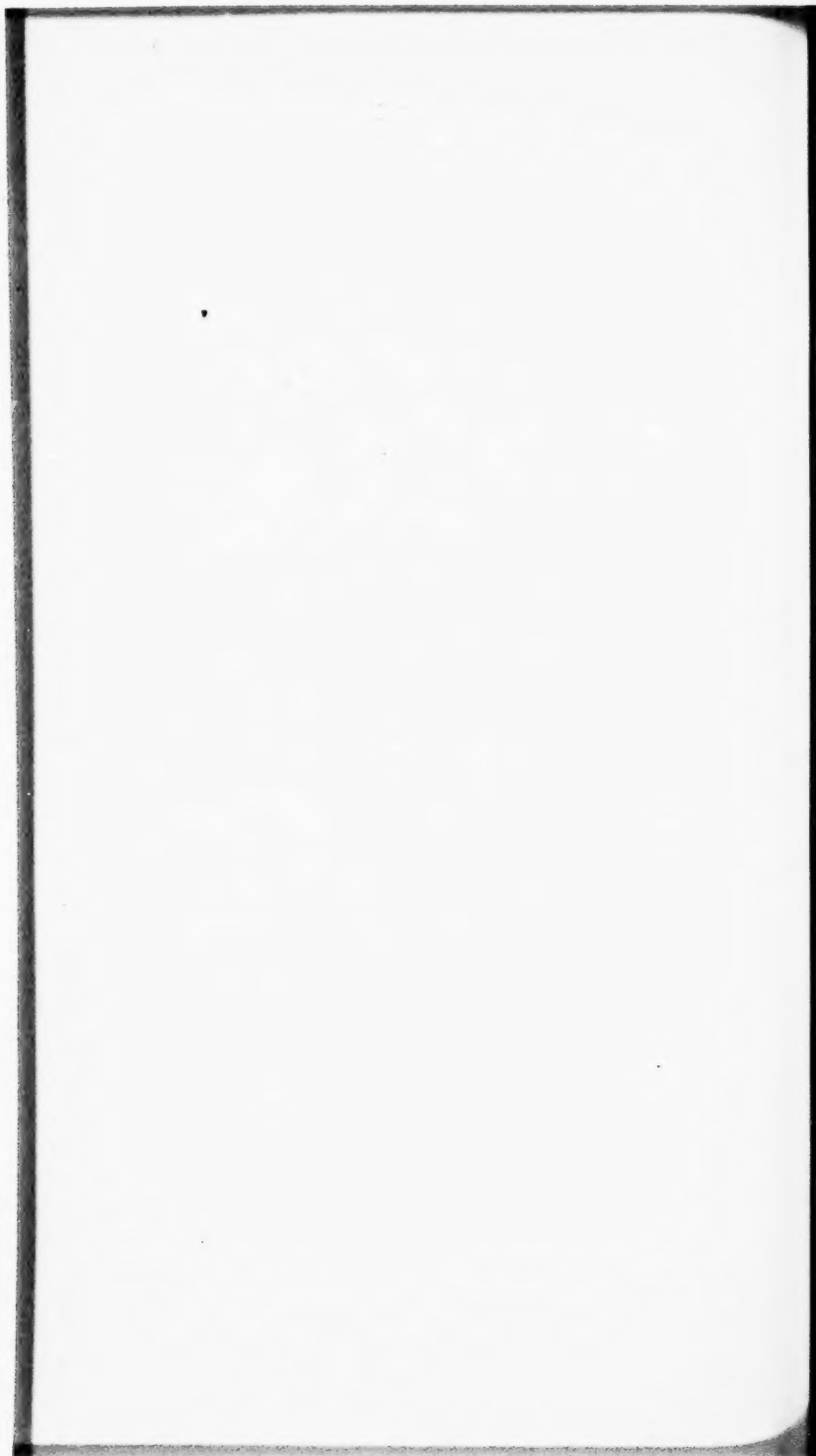
No. 511.

THIXTON, MILLETT & COMPANY

v.

S. W. STONE ET AL.

Bill	408	231
Restraining order.....	420	238
Appearance of defendants	422	239
Demurrer to bill	423	240
Order on demurrer.....	426	241
Order overruling demurrer.....	427	242
Order, temporary injunction.....	428	242
Answer.....	429	243
Certificate of clerk to transcript.....	441	250



6 In the Circuit Court of the United States for the Western District of Oklahoma.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Complainant,

vs.

FRED CALDWELL, CHARLES C. POST, and ROY D. HOLCOMB, Defendants.

Bill in Equity.

The Atchison, Topeka and Santa Fe Railway Company, a public service corporation under the laws of the State of Kansas, and having its residence therein, brings this Bill of Complaint against Fred Caldwell, Charles C. Post and Roy D. Holcomb, citizens of the State of Oklahoma, and inhabitants of the Western District of said State.

Therefore your orator complains and says that it is now and for many years past has been a common carrier of goods for hire engaged in the transportation of all classes of goods that may be lawfully transported from one State into another, as well as from points within the State of Oklahoma to other points within the State, and as such common carrier it has built up an extensive and valuable business.

2. That as a common carrier of goods for hire, it becomes its duty to accept for transportation from points outside of the State to points inside the State intoxicating liquors of various characters, including beer, wine, whiskey, etc.; that it cannot legally refuse because of its position as a common carrier to receive for shipment and transport from points without the state to points within the State this character of goods in the ordinary course of business; that in the past six months it has had tendered to it and accepted large quantities of this class of goods for shipment from points outside of the State from which it has received large revenues, to-wit, more than the sum of Two Thousand Dollars per annum;

7 3. That when said goods are tendered to it for shipment it is required by law to issue its bill of lading therefor, whereby it binds itself to transport said goods and deliver the same to the consignee mentioned in said Bill of lading at the point of destination of said shipment, and that if it fails to so deliver said goods to said consignee so mentioned therein, it becomes liable in damage to the said consignee for the value of said goods and suit may be maintained against it therefor.

4. That owing to the large amount of said class of goods that have heretofore been shipped and that will hereafter be shipped, the value of the business of handling and transporting said goods is worth to this your orator far in excess of the sum of Two Thousand Dollars; that the defendants herein have repeatedly interfered with the business of your orator in its shipments constituting Interstate business of intoxicating liquors where the same are consigned from

a point outside of the State to a point within the state; have interfered and prevented your orator from making delivery of said goods; that they have lately conspired together and are continuing to conspire together and are now actually preventing by their concerted action the delivery by your orator herein of more than One Thousand Dollars' worth of goods which it has received from points outside of the State consigned to points within the State and which it has carried to the point of destination and is desirous of delivering;

5. That your orator will continue to be compelled to receive large quantities of this character of merchandise which in the course of the year exceed in value the sum of many thousands of Dollars and the earnings on which will be worth to your orator more than the sum of Two Thousand Dollars; that the defendants herein conspiring together are greatly harassing and interfering with the business of your orator in the transportation and delivery of the character of goods above described and threaten to and propose to continue their interference with your orator's transportation of such intoxicating liquors from points outside the State to points within the State until they have entirely destroyed said business and until they have involved your orator in innumerable law suits

8 with parties who lawfully tendered to it for shipment such character of merchandise, and to whom it is required to issue its Bill of Lading and for whom it is required to transport said merchandise from points without the State to points within the State.

6. That the said defendants conspiring together have been in the habit of entering the freight depots of your orator herein and seizing such intoxicating liquors shipped from points outside of the State to points inside of the State in the ordinary course of business, and preventing the delivery thereof to the consignee; that said defendants are not actually preventing the delivery by your orator to about forty-three consignees of consignments of intoxicating liquors shipped from points outside of the State to points inside of the State in the ordinary course of business, and are about to and will involve your orator in more than forty-three law suits for the value of said intoxicating liquors, for which your orator in the ordinary course of business issued its Bill of lading for the shipment of the same from points outside of the State to points within the State and that the said defendants propose to and will continue to interfere with such deliveries unless restrained by this Honorable Court until they have involved your orator in thousands of law suits and will have done it irreparable injury, for which it has and can secure no adequate relief at law.

7. Your orator further complains that the said defendants have been in the habit, for the purpose of harassing your orator in the discharge of its duties, of swearing out search warrants or causing the same to be sworn out for the purpose of searching the depots and storage rooms of your orator; that said search warrants are not sworn out in good faith and not in the belief that there is any actual violation of the law or that your orator has in its possession any other intoxicating liquors than those shipped from points out-

side of the State to points inside of the State in the ordinary course of business and which are in your orator's possession for prompt delivery, but, notwithstanding said facts being well known to the said defendants and with no other purpose than to harass your orator in the transaction of its business, and to disturb its agents and to do it an injury, the said parties continue in open

9 violation of the law, to swear out said search warrants and to maliciously interfere with your orator in the discharge of its duties as a common carrier in the transmission from points outside of the State to points inside of the State of intoxicating liquors.

8. That it is the purpose of said defendants to continue said wrongs and interference until they have completely destroyed the transportation business of your orator in the handling of intoxicating liquors from points outside of the State to points within the State and that the value of said business is far in excess of the sum of Two Thousand Dollars.

9. That the continuation of said course above complained of by your orator will involve your orator in innumerable law suits to which damage in sums far in excess of the sum of Two Thousand Dollars.

10. That your orator respectfully claims that under the Constitution and the laws of the United States it lawfully may engage in the transportation in the ordinary course of business of intoxicating liquors from a point without the State to a point within the State and there deliver the same to the consignee named in said Bill of Lading, and that the defendants by their course are seeking to deny said right and to deprive this your orator of the right so guaranteed to it by the Constitution and laws of the United States and that your orator is entitled to be protected in its said right by the orders and judgment of this Court.

11. Your orator further avers that the defendants one or all of them and particularly the defendant Fred Caldwell, is engaged in the unlawful pursuit of going from point to point in the State and aiding, abetting, assisting, advising and encouraging various divers and sundry persons to unlawfully interfere with the exercise of the duties and privileges of your orator as a common carrier, by then and there causing said persons to interfere and attempt to interfere with the delivery of shipments of intoxicating liquors by your orator to persons resident in this State, which liquors are shipped in the ordinary course of business to such persons from points outside of the State and causing them to go into the depots and cars of your orator and to then and there seize and attempt to confiscate such liquors so shipped from points outside of the State

10 to points inside of the State in the ordinary course of business and which are held ready for prompt delivery by your orator to the consignees thereof; that said defendants are pursuing said course with the full knowledge of the fact that the same is in violation of the law and for the preconceived purpose of harassing your orator herein.

12. That when they secure possession of any intoxicating liquors from your orator under the circumstances above detailed they under-

take by some character of proceedings to confiscate the same in violation of the Constitution of the United States with reference to the commerce between States, and the laws of the United States made pursuant thereto:

13. That by reason of the wrongs and injuries already done and by reason of the fact that said wrongs and injuries will be continued in the manner and form heretofore complained of, your orator has been greatly damaged in the excess of two thousand dollars; that it has suffered irreparable injury in the handling of its business; that it has no adequate relief at law from the wrongs and injuries herein complained of, and unless protected by the orders of this Court, it will continue to suffer great and irreparable injury at the hands of the said defendants and those whom they incite and abett in like conduct.

Your orator further says that it has caused notice to be served upon said defendants except the defendant Holcomb, that it will apply to the Honorable J. H. Cotteral, Judge of the United States District Court for the Western District of Oklahoma at Guthrie at ten o'clock A. M. on the 25th day of August, 1908, for an injunction restraining the said defendants herein from the further commission of the wrongs complained of by your orator herein.

14. Your orator further avers that the said defendants herein claim to be acting under and by virtue of the terms of Article 3 of Senate Bill No. 71 known as the Billups Bill in the wrongful acts hereinbefore complained of, and that they threaten to continue to invade the depots and cars of your orator and to seize and attempt to confiscate all such shipments of intoxicating liquors received by

11 it from points outside of the State consigned to persons within the State, and to deprive your orator of its right and prevent its performing its legal duty to receive, transport and deliver such shipments; that the said defendants now have in their possession a large amount covering more than forty three separate shipments of intoxicating liquors shipped from points outside of the State to persons within the State, which they are seeking to confiscate to the great damage and prejudice of your orator and in violation of the Constitution and laws of the United States.

15. Your orator further charges and believes that the defendants herein are not financially able to respond in damages for the large sums of money in which it will be damaged and by reason of the continued wrongs and injuries heretofore practiced and hereafter to be practiced upon your orator herein.

Wherefore Your orator prays that process be duly issued directed to said defendants commanding them to appear and answer in accordance with the law and the rules of this court, answer under oath being specially waived, and that pending said time that a temporary restraining order followed by temporary injunction be granted restraining the defendants and each of them from entering the depots or other storage rooms of your orator and taking therefrom intoxicating liquors shipped from points out of the State to persons within the State in the ordinary course of business; that they be restrained from in any wise interfering with your orator

in the handling and delivering of intoxicating liquors shipped from points outside of the State consigned to persons within the State and that said parties be enjoined and restrained from inciting other persons or aiding, abetting or advising them to do likewise, and that they further be enjoined and restrained from maliciously swearing out a search warrant for the purpose of harassing your orator in the discharge of its duties, and upon the final hearing of this case, that said injunction be made perpetual and your orator be granted such other and further relief as in equity and good conscience it may be entitled to.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,
By COTTINGHAM & BLEDSOE,
Its Attorneys.

12 UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

STATE OF OKLAHOMA,
County of Logan:

I, S. T. Bledsoe, being duly sworn on oath do state that I am an agent of the Atchison, Topeka & Santa Fe Railway Company; that it is a Corporation; that none of its general officers are present in the State to make this affidavit, that I am familiar with the matters and things alleged in the Complaint herein, and that they are true.

S. T. BLEDSOE.

Subscribed and sworn to before me this 26th day of August, 1908.

[SEAL.]

HARRY L. FINLEY,

Clerk U. S. Circuit Court, Western District of Oklahoma.

13 In the Circuit Court of the United States, Western District
Oklahoma.

Notice.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Plaintiff,

vs.

FRED S. CALDWELL, CHARLES C. POST, ROY D. HOLCOMB, Defendants.

You and each of you are hereby notified that the Atchison, Topeka & Santa Fe Railway Company, will, at the City of Guthrie on the 26th day of August, 1908, present to the Honorable J. H. Cotteral, Judge, an application for an order restraining you and each of you from further interfering with the plaintiff in the transaction of its interstate business in the handling of liquors and intoxicants tendered to it for shipment from points outside of the State to points inside of the State, and to restrain you from removing said shipments from its depots, cars and warehouses, and otherwise

interfering with it in the discharge of its duty to interstate shipping facilities, and for such other and further relief as the plaintiff may be entitled to in the premises.

ATCHISON, TOPEKA & SANTA FE RY.,
By COTTINGHAM & BLEDSOE,
Its Solicitors.

I certify that I served the above and foregoing notice on Charles C. Post at Oklahoma City, Oklahoma, on the 25th day of August 1908, by then and there delivering each of said parties a true and correct copy of said notice.

G. F. CAFFEY, *Constable.*

Subscribed and sworn to before me this 25 day of Aug. 1908.

[SEAL.]

H. T. HOWARD,
Notary Public.

My commission expires Dec. 20/1908.

14

Search Warrant.

Copy.

STATE OF OKLAHOMA,
Oklahoma County, ss:

In the name of the State of Oklahoma.

To any sheriff, constable, marshal, or policeman in the County of
of Oklahoma, Greeting:

Proof by affidavit having been made this day before me by
davit showing that on the 20th day of Aug. 1908 persons to
unknown at the A. T. & S. F. Ry. Co.'s freight depot in Oklahoma
City, Oklahoma County, Okla. did, then and there, unlawfully and
wilfully have in their possession and under their control, and did,
then and there, keep, and do now have in their possession and under
their control, and do now keep for the purpose of selling, barter-
ing, giving away and otherwise furnishing and issuing in violation
of law certain intoxicating, liquors described as follows, to-wit: Beer,
whiskey and wine.

And it appearing that there is probable cause for believing that
such grounds are true, you are, therefore, commanded, in the day
or night time, to make immediate search of the above described
premises and seize and safely keep and bring before the undersigned
any and all of the above described property, and to serve a copy of
this warrant upon the defendants and each of them, or any person
or persons in whose possession or under whose control the above
described property may be found, and to arrest the said defendants
and each of them, and if no person be found in the possession of
said property, so state in your return and post a copy of this war-
rant on the door of the building or room wherein the said prop-

erty is found and make return of this warrant within three days from issuance thereof.

Dated this 20th day of Aug. 1908.

SAM HOOKER,
County Judge.

Endorsed: Search Warrant. The State of Oklahoma vs. Certain Intoxicating Liquors. Defendants. Issued — 190—, On complaint filed before — —, Justice of the Peace in and for Oklahoma City Township, Oklahoma County, State of Oklahoma.

STATE OF OKLAHOMA,
Oklahoma County, ss:

Received this writ this — day of — 190—, and executed the same by arresting said — and by seizing the following described property, the same being covered by this warrant, to-wit — on the — day of — 190—, and by bringing the defendants and said property before the Court as commanded.

— —, *Sheriff.*

— —, *Deputy Sheriff.*

Sheriff's fees: Executing search warrant \$—. Arrest \$—. Attendance \$—. Mileage \$—. Commitment \$—. Drayage \$—.

15 (Endorsed on back:) No. 276. The Atchison, Topeka and Santa Fe Railway Co., Complainant, vs. Fred S. Caldwell, Charles C. Post and Roy D. Holcomb, Defendants. Complaint. Filed Aug. 26, 1908. Harry L. Finley, Clerk. Cottingham & Bledsoe, Att'ys for Complain't.

16 ⁷⁶₁₁₆ In the Circuit Court of the United States, Western District, Oklahoma.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Plaintiff,
vs.
FRED S. CALDWELL, CHARLES C. POST and ROY D. HOLCOMB,
Defendants.

Notice.

You and each of you are hereby notified that The Atchison, Topeka and Santa Fe Railway Company, at the City of Guthrie on the 25th day of August, 1908, present to the Honorable J. H. Cotteral, Judge, an application for an order restraining you and each of you from further interfering with the plaintiff in the transaction of its interstate business in the handling of liquors and intoxicants tendered it for shipment from points outside of the State to points inside the State, and to restrain you from removing said shipments from its depots, cars and warehouses, and otherwise interfering with it in the discharge of its duty to interstate shipping facilities,

and for such other and further relief as the plaintiff may be entitled to in the premises.

THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY.
By COTTINGHAM & BLEDSOE,
Its Attorneys.

Endorsed: 276. A., T. & S. F. Ry. Co. vs. Caldwell, et al. Notice
& Ret. Filed Aug. 26, 1908. Harry L. Finley, Clerk.

United States Marshal's Return.

WESTERN DISTRICT OF THE STATE OF OKLAHOMA:

Received the within notice of the Circuit Court of the United States for the Western District of Oklahoma, the 25th day of August, 1908, and executed the same as follows:

I served said notice on the within named defendant, Fred S. Caldwell, by delivering to him in person, a true copy of the within notice at Guthrie, Oklahoma, this 25th day of August, 1908.

The within named Charles C. Post and R. D. Holcom could not be found in my District.

JNO. R. ABERNATHY,
U. S. Marshal, Western District of Oklahoma,
By J. P. JONES, *Deputy.*

17 In the Circuit Court of the United States for the Western
District of Oklahoma.

In Equity.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.
Complainant,

vs.

FRED S. CALDWELL, CHARLES C. POST and ROY D. HOLCOMB.
Defendants.

Now on this 26th day of August, 1908, complainant appeared by its Solicitor, S. T. Bledsoe, and defendant Fred S. Caldwell appeared in his own proper person and for the other defendants, Charles C. Post and Roy D. Holcomb, and the complainant thereupon presented its application for a temporary injunction as prayed in said Complaint, and it is ordered that said application be set down for hearing on the fifth day of September, 1908, at ten o'clock A. M. at the Federal Court room in the City of Guthrie.

It is further ordered that in the meantime and until such application can be heard, the said defendants, Fred S. Caldwell, Charles C. Post and Roy D. Holcomb and each of them and their agents and employees, be restrained from entering the cars, depots or other storage rooms of the Atchison, Topeka and Santa Fe Railway Com-

pany and taking therefrom intoxicating liquors shipped from points out of the State to persons within the State, and that they be restrained from in any wise interfering with the Complainant in its handling and delivering of intoxicating liquors shipped from points outside of the State and consigned to persons within the State, and from inciting other persons or aiding, abetting or advising them to do likewise.

This order shall not interfere with the seizure of such property made after the actual delivery thereof to the consignees.

JOHN H. COTTERAL, *Judge.*

O. K.

S. T. BLEDSOE, *for Plf.*

O. K.

F. S. CALDWELL,
For Defendants.

Endorsed: No. 276. Atchison, Topeka & Santa Fe, Compl't.
vs. Fred S. Caldwell, et al., Def'ts. Restraining Order. Filed
Aug. 26, 1908. Harry L. Finley, Clerk.

18 In the Circuit Court of the United States for the Western
District of Oklahoma.

No. —.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
Complainant,

vs.

FRED S. CALDWELL, CHARLES G. POST, and ROY D. HOLCOMB,
Defendants.

Stipulation.

Come now the parties in the above entitled action and hereby agree that the time to take evidence may be extended to the first day of January, 1910, and further show to the Court that there is great probability that during said time and period the cause will either be disposed of by agreement or will be submitted to the court on agreed statement of facts for disposition.

COTTINGHAM & BLEDSOE,

Solicitors for Complainant.

FRED S. CALDWELL,

Solicitors for Defendants.

Endorsed: In the Circuit Court of the United States for the Western District of Oklahoma. No. 276. The Atchison, Topeka and Santa Fe Railway Company, Complainant, v. Fred S. Caldwell, Charles G. Post, and Roy D. Holcomb, Defendants. Stipulation. Filed Aug. 31, 1909. Harry L. Finley, Clerk.

19 In the Circuit Court of the United States for the Western District of Oklahoma.

No. —.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
Complainant,

vs.

FRED S. CALDWELL, CHARLES G. POST, and ROY D. HOLCOMB
Defendants.

Order.

Now on this 31st day of August, A. D. 1909, for good cause shown the time to take evidence is hereby extended to 1st day of January, A. D., 1910.

JOHN H. COTTERAL,
*Judge of the United States Circuit Court
for the Western District of Oklahoma.*

Endorsed: In the Circuit Court of the United States for the Western District of Oklahoma. No. 276. The Atchison, Topeka and Santa Fe Railway Company, Complainant, vs. Fred S. Caldwell, Charles G. Post and Roy D. Holcomb, Defendants. Order. Filed Aug. 31, 1909. Harry L. Finley, Clerk.

20 In the Circuit Court of the United States for the Western District of Oklahoma.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Plaintiff.

vs.

FRED CALDWELL, CHARLES C. POST, and ROY D. HOLCOMB
Defendants.

On this, the 5th day of September, 1908, this cause coming on to be heard on the application for the temporary injunction, pursuant to the order heretofore made in this case, the Attorneys for the Defendant appear and request that said cause be postponed until October 15th, consenting that the restraining order heretofore granted be continued in force during said time. Said request not being objected to by the plaintiff, it is ordered that the hearing on the application for the temporary injunction herein be continued and be set for October 15th at ten o'clock A. M. at the U. S. Court Room at Guthrie, Oklahoma. It is further ordered that in the meantime and until further order of the court or judge, the restraining order heretofore granted in this cause be continued in force.

JOHN H. COTTERAL, *Judge.*

Endorsed: 276. A., T. & S. F. Ry. Co. vs. Fred Caldwell, et al. Order. Filed Sept. 5, 1908. Harry L. Finley, Clerk.

21 In the Circuit Court of the United States for the Western District of Oklahoma.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
Complainant,

vs.

FRED S. CALDWELL, CHARLES C. POST and ROY D. HOLCOMB,
Defendants.

Now on this the 15th day of October, 1908, the complainant appeared by Solicitor S. T. Bledsoe, and the defendant Fred S. Caldwell appeared in his own proper person for the other defendants and requested that said cause be continued and consented that a temporary injunction be granted in said cause to remain in force until further orders in this court. It is therefore ordered that the defendants, Fred S. Caldwell, Charles C. Post and Roy D. Holcomb, and each of them and their agents and employees be restrained from entering the cars, depots or other storage rooms of The Atchison, Topeka and Santa Fe Railway Company and taking therefrom intoxicating liquors shipped from points outside of the State to points within the State and that they be restrained from in any wise interfering with the complainant in its handling and delivering of intoxicating liquors shipped from points outside of the State and consigned to persons within the State, and from inciting other persons or aiding, abetting or advising them to do likewise.

This order shall not interfere with the seizure of such property made after the actual delivery thereof to the consignees.

This order shall be in full force and effect from and after the time the complainant shall file a bond in the sum of Two Hundred fifty (\$250.00) Dollars, to be approved by the Clerk of this Court.

JOHN H. COTTERAL, *Judge.*

O. K.

COTTINGHAM & BLEDSOE.

FRED S. CALDWELL.

Endorsed: #276. A. T. & S. F. Ry. Co., Compl't, vs. Fred S. Caldwell, et al., Def'ts. Temporary Injunction. Filed Oct. 15, 1908. Harry L. Finley, Clerk.

22 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 276. In Equity.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Complainant,

vs.

FRED CALDWELL, CHARLES C. POST AND ROY D. HOLCOMB, Defendants.

The joint and several answer of Charles C. Post and Roy D. Holcomb, two of the defendants to the bill of complaint of the Atchison, Topeka and Santa Fe Railway Company.

These defendants respectively, now and at all times hereinafter saving to themselves all and all manner of benefit or exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, or so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering out of time, leave of Court and consent of counsel for complainant thereto having been first had and obtained, say:

1. These defendants severally admit all the statements and allegations contained in said bill of complaint down to paragraph numbered 2, but as to paragraph number 2 they specifically deny that as such common carrier of goods for hire it is complainant's duty to accept for transportation from points outside of the State of Oklahoma to points inside of said State intoxicating liquors generally, and without regard to the purpose for which said intoxicating liquors are being brought into said State, and the use to which they are to be put by the consignee thereof, and specifically state, that not only can complainant legally refuse, but in equity and good conscience it ought to refuse to receive, or in any manner handle shipments of intoxicating liquors from points without the State of Oklahoma to points within said State, when such liquors are intended by the person to whom complainant is directed to make delivery thereof to be kept, used or in any manner disposed of in violation of the laws of said State. Answering further as to said paragraph

No. 2, these defendants severally say: That they admit that 23 in the six months immediately preceding the filing of said bill of complaint, complainant had tendered to it and accepted large quantities of intoxicating liquors for shipment from points outside of the State of Oklahoma to points inside said State, from which said shipments it received large revenues, to-wit, more than the sum of Two Thousand Dollars (\$2,000) per annum, but these defendants say that by far the greater portion of such intoxicating liquors so received by complainant and transported into the State of Oklahoma were knowingly received by it and transported into said State to be there delivered to sundry and divers

persons for the sole and express purpose of being used by said persons to whom delivered in violation of the laws of said State, to-wit, in violation of the Constitution of said State and in violation of an Act passed by the First Legislature of the State and approved on the 24th day of March, 1908, and known among the acts of said first Legislature as Senate Bill No. 61, and also in violation of an Act of Congress approved on the 16th day of June, 1906, (Chap. 3335 U. S. Stats., 1905-1906. Part 1, Page 267) and entitled:

"An act to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original states; and to enable the people of New Mexico and of Arizona to form a Constitution and State government and be admitted into the Union on an equal footing with the original States."

2. As to paragraph 3 of said bill of complaint these defendants severally deny that when intoxicating liquors are tendered to complainant for shipment into said State of Oklahoma it is required by law to issue its bill of lading therefor, whereby, it binds itself in manner and form as stated in said paragraph 3, except as to such intoxicating liquors as are not intended by the person to whom complainant is ordered and directed to make delivery within said State of Oklahoma to be kept, used or in any manner disposed of in violation of the laws of said State.

3. Defendants severally say, that they have never knowingly, or intentionally interfered in any manner with interstate shipments of intoxicating liquors while in the possession of complainant as an interstate common carrier, and prior to the attaching of the police powers of the State of Oklahoma to and upon the same; and that all acts either done or performed by them, or either of them,

24 touching upon such matters were done and performed under due legal process of some court or tribunal of competent jurisdiction of said State of Oklahoma, and in the execution of the police laws and regulations of said State after such intoxicating liquors had become subject to the exercise thereof; and these defendants severally deny that they have ever, in any manner or form whatsoever, conspired together to interfere with, or in any manner or to any degree whatever, the prosecution by complainant of its business as an interstate common carrier; and these defendants further say, that if in the legal manner and under due process of law as hereinabove described, they ever took from complainant any intoxicating liquors before they became subject to the exercise of the police powers of the State of Oklahoma, that they did so mistakenly and inadvertently, and within a reasonable time after they became apprised of the true facts in the case they delivered all such intoxicating liquors back to complainant.

4. As to paragraph 5 of said bill of complaint these defendants severally say: That they have no knowledge concerning the quantities of intoxicating liquor which in the course of a year will be tendered to complainant for transportation from points outside the State of Oklahoma to points inside said State, and which are not

intended by the person or persons receiving the same from complainant at the point of destination to be used in violation of the laws of said State; but these defendants severally deny that complainant is, or will be, compelled to receive and carry intoxicating liquors of any character or sort from points outside of said State to points inside of said State, except such as are not intended by the person or persons to whom delivered at the point of destination to be used in violation of the laws of said State. And these defendants expressly deny that they or either of them are conspiring together for the purpose of interfering with the business of complainant as such interstate common carrier, or that they or either of them are harassing or interfering with, or have ever harassed or interfered with the business of complainant as such interstate common carrier, as alleged and charged in the latter part of said paragraph 5 of said bill of complaint.

25 5. As to paragraph 6 of said bill of complaint these defendants severally say: That they deny each and every allegation and statement therein contained.

6. As to paragraph 7 of said bill of complaint these defendants severally say: That they deny each and every allegation and statement therein contained.

7. As to paragraph 8 of said bill of complaint these defendants severally say: That they deny each and every allegation and statement therein contained.

8. As to paragraph 9 of said bill of complaint these defendants severally say: That they deny each and every allegation and statement therein contained.

9. As to paragraph 10 of said bill of complaint these defendants severally say: That they deny that they or either of them have ever at any time sought or undertaken, either by word or deed, to deprive complainant of, or injure it in, any of its rights guaranteed to it by the Constitution and laws of the United States.

10. As to paragraph 11 of said bill of complaint these defendants severally say: That they deny that they or either of them are, or ever have been, engaged in going from point to point in the State of Oklahoma, and aiding, or abetting, or assisting, or advising, or encouraging various and sundry persons, or any person or persons to unlawfully interfere with the exercise of the duties and privileges of complainant as a common carrier, by then and there causing said person or persons to interfere, or attempt to interfere with the shipment and delivery of intoxicating liquors which are the subject of complainant's interstate business, or by causing and inducing such persons to go into depots and cars of complainant's and then and there seize or attempt to seize and confiscate interstate shipments of intoxicating liquors prior to the attaching of the police powers of the State of Oklahoma to such shipments of intoxicating liquors.

11. As to paragraph 12 of said bill of complaint these defendants severally say: That they deny each and every allegation

26 therein contained.

12. As to paragraph 13 of said bill of complaint these

defendants severally say: That they deny each and every allegation therein contained.

13. As to paragraph 14 of said bill of complaint these defendants severally say: That they deny each and every allegation in said paragraph contained, except that they admit having acted on certain occasions in the capacity of public officers of the State of Oklahoma, under good and valid process issued pursuant to certain provisions contained in a statute of the State of Oklahoma, which said statute was passed by the First Legislature of said State and approved on the 24th day of March, 1908, and is known among the acts of said First Legislature as Senate Bill No. 61.

14. And these defendants and each of them deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this there is no other material cause or thing in said complainant's said bill of complaint contained material or necessary for these defendants or either of them to make answer to and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true, to the knowledge or belief of these defendants and each of them, all which matters and things these defendants and each of them are ready and willing to aver, maintain and prove as this Honorable Court shall direct; and humbly prays to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

FRED S. CALDWELL,

Attorney for Defendants.

Endorsed: No. 276. U. S. Circuit Court, Western District. A. T. S. & F. Ry. Co. vs. Fred Caldwell, C. C. Post and Roy D. Holcomb. Answer. Filed Dec. 7th, 1908. Harry L. Finley, Clerk. Plff consents for Def'ts to ans. out of time. Cottingham & Bledsoe.

27 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 276. In Equity.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
Complainant,

vs.

FRED CALDWELL, CHARLES C. POST and ROY D. HOLCOMB,
Defendants.

The Answer of Fred S. Caldwell, one of the Defendants to the Bill of Complaint of the Atchison, Topeka and Santa Fe Railway Company.

This defendant, now and at all times hereinafter saving to himself all and all manner of benefit or exception or otherwise that can or may be had or taken to the many errors, uncertainties and im-

perfections in the said bill contained, or so much thereof as this defendant is advised is material or necessary for him to make answer to, answering out of time, leave of Court and consent of counsel for complainant thereto having been first had and obtained, says:

1. This defendant admits all the statements and allegations contained in said bill of complaint down to paragraph numbered 2, but as to paragraph number 2 he specifically denies that as such common carrier of goods for hire it is complainant's duty to accept for transportation from points outside of the State of Oklahoma to points inside of said State intoxicating liquors generally, and without regard to the purpose for which said intoxicating liquors are being brought into said State, and the use to which they are to be put by the consignee thereof, and specifically state, that not only can complainant legally refuse, but in equity and good conscience it ought to refuse to receive, or in any manner handle shipments of intoxicating liquors from points without the State of Oklahoma to points within said State, when such liquors are intended by the person to whom complainant is directed to make delivery thereof to be kept, used or in any manner disposed of in violation of the laws of said State. Answering further as to said paragraph No. 2

28 this defendant says: That he admits that in the six months immediately preceding the filing of said bill of complaint, complainant had tendered to it and accepted large quantities of intoxicating liquors for shipment from points outside of the State of Oklahoma to points inside said State, from which said shipments it received large revenues, to-wit, more than the sum of Two Thousand Dollars (\$2,000) per annum, but this defendant says that by far the greater portion of such intoxicating liquors so received by complainant and transported into the State of Oklahoma were knowingly received by it and transported into said State to be there delivered to sundry and divers persons for the sole and express purpose of being used by said persons to whom delivered in violation of the laws of said State, to-wit, in violation of the constitution of said State and in violation of an Act passed by the First Legislature of the State and approved on the 24th day of March, 1908, and known among the acts of said First Legislature as Senate Bill No. 61, and also in violation of an Act of Congress approved on the 16th day of June, 1906, (Chap. 3335 U. S. Stats., 1905-1906. Part 1. Page 267) and entitled:

"An Act To enable the people of Oklahoma and of the Indian Territory to form a constitution and State Government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a Constitution and state government and be admitted into the Union on an equal footing with the original States."

2. As to paragraph 3 of said bill of complaint this defendant denies that when intoxicating liquors are tendered to complainant for shipment into said State of Oklahoma it is required by law to issue its bill of lading therefor, whereby, it binds itself in manner and form as stated in said paragraph 3, except as to such intoxicat-

ing liquors as are not intended by the person to whom complainant is ordered and directed to make delivery within said State of Oklahoma to be kept, used or in any manner disposed of in violation of the laws of said State.

3. Defendant says that he has never knowingly, or intentionally interfered in any manner with interstate shipments of intoxicating liquors while in the possession of complainant as an interstate common carrier, and prior to the attaching of the police powers of the State of Oklahoma to and upon the same; and that all acts either done or performed by him touching upon such matters, were done and performed under due legal process of some court or
29 tribunal of competent jurisdiction of said State of Oklahoma, and in the execution of the police laws and regulations of said State after such intoxicating liquors had become subject to the exercise thereof; and this defendant denies that he has ever, in any manner or form whatsoever, conspired to interfere with, or in any manner or to any degree whatever, the prosecution by complainant of its business as an interstate common carrier; and this defendant further says, that if in the legal manner and under due process of law as hereinabove described, he ever took from complainant any intoxicating liquors before they became subject to the exercise of the police powers of the State of Oklahoma, that he did so mistakenly and inadvertently, and within a reasonable time after he became apprised of the true facts in the case he delivered all such intoxicating liquors back to complainant.

4. As to paragraph 5 of said bill of complaint this defendant says: That he has no knowledge concerning the quantities of intoxicating liquor which in the course of a year will be tendered to complainant for transportation from points outside the State of Oklahoma to points inside said State, and which are not intended by the person or persons receiving the same from complainant at the point of destination to be used in violation of the laws of said State; but this defendant denies that complainant is, or will be, compelled to receive and carry intoxicating liquors of any character or sort from points outside of said State to points inside of said State, except such as are not intended by the person or persons to whom delivered at the point of destination to be used in violation of the laws of said State. And this defendant expressly denies that he is conspiring for the purpose of interfering with the business of complainant as such interstate common carrier, or that he is harassing or interfering with, or has ever harassed or interfered with the business of complainant as such interstate common carrier, as alleged and charged in the latter part of said paragraph 5 of said bill of complaint.

5. As to paragraph 6 of said bill of complaint this defendant says: That he denies each and every allegation and statement therein contained.

6. As to paragraph 7 of said bill of complaint this defendant says: That he denies each and every allegation and statement therein contained.

30 7. As to paragraph 8 of said bill of complaint this defendant says: That he denies each and every allegation and statement therein contained.

8. As to paragraph 9 of said bill of complaint this defendant says: That he denies each and every allegation and statement therein contained.

9. As to paragraph 10 of said bill of complaint this defendant says: That he denies that he has ever at any time sought or undertaken, either by word or deed, to deprive complainant of, or injure it in, any of its rights guaranteed to it by the Constitution and laws of the United States.

10. As to paragraph 11 of said bill of complaint this defendant says: That he denies that he is, or ever has been, engaged in going from point to point in the State of Oklahoma, and aiding or abetting, or assisting, or advising, or encouraging various and sundry persons, or any person or persons to unlawfully interfere with the exercise of the duties and privileges of complainant as a common carrier, by then and there causing said person or persons to interfere, or attempt to interfere with the shipment and delivery of intoxicating liquors which are the subject of complainant's interstate business, or by causing and inducing such persons to go into depots and cars of complainant's and then and there seize or attempt to seize and confiscate interstate shipments of intoxicating liquors prior to the attaching of the police powers of the State of Oklahoma to such shipments of intoxicating liquors.

11. As to paragraph 12 of said bill of complaint this defendant says: That he denies each and every allegation therein contained.

12. As to paragraph 13 of said bill of complaint this defendant says: That he denies each and every allegation therein contained.

13. As to paragraph 14 of said bill of complaint this defendant says: That he denies each and every allegation in said paragraph contained, except that he admits having acted on certain occasions in the capacity of a public officer of the State of Oklahoma, under good and valid process, issued pursuant to certain provisions contained in a statute of the State of Oklahoma, which said statute was passed by the First Legislature of said State and approved on the 24th of March, 1908, and is known among the acts of said First Legislature as Senate Bill No. 61.

31 14. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this there is no other material cause or thing in said complainant's said bill of complaint contained material or necessary for this defendant to make answer to and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true, to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

FRED S. CALDWELL,
Attorney for Self.

Cross-Complaint.

For cross-complaint and for affirmative relief, your orator, Fred S. Caldwell, shows to the Honorable Judges of the Circuit Court of the United States, in and for the Western District of Oklahoma:

First. That he is a citizen of the State of Oklahoma, and a resident of the Western District in said State; that he is a public officer of said State, viz., Counsel to the Governor; that he comes into court at the suit of The Atchison, Topeka and Santa Fe Railway Company vs. Fred Caldwell, Charles C. Post and Roy D. Holcomb.

Second. That the said Charles C. Post and Roy D. Holcomb have filed their joint and several answer in said cause in this court.

Third. That an Act of Congress approved on the 16th day of June, 1906, (Chap. 3335 U. S. Stats., 1905-1906. Part 1. Page 267), and entitled:

"An Act To enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a Constitution and State government and be admitted into the Union on an equal footing with the original States."

Contains among other things the following:

"That the manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within those parts of said State now known as the Indian Territory and the Osage Indian Reservation and within any other parts of said State which existed as Indian Reservations on the first day of January, nineteen hundred and six, is prohibited for a period of twenty-one years from the date of the admission of said State into the Union, and thereafter until the people of said State shall otherwise provide by amendment of said constitution and proper State Legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale and wine, contrary to the provisions of this section, or who shall, within the above-described portions of said State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from other parts of said State into the portions hereinabove described, shall be punished, on conviction thereof, by fine not less than fifty dollars and by imprisonment not less than thirty days for each offense; Provided, That the legislature may provide by law for one agency under the supervision of said State in each incorporated town of not less than two thousand population in the portions of said State hereinbefore described; and if there be no incorporated town of two thousand population in any county in said portions of said State, such county shall be entitled to have one such agency, for the sale of such liquors for medicinal purposes; and for the sale, for industrial purposes, of alcohol which shall have been denaturized by some process approved by the United States Commissioner of

Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum not less than one thousand dollars, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the parts of said State hereinabove defined shall constitute prima facie evidence of his intention to violate the provisions of this Section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purposes for which the liquor is to be used, and no sale shall be made for medicinal purposes except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a bona fide prescription signed by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered, and the register thereof, together with the affidavits and prescriptions pertaining thereto, shall be open to inspection by any officer or citizen of said State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor except for treatment of diseases which after his own personal diagnosis he shall deem to require such treatment, shall, upon conviction thereof, be punished for each offense by fine of not less than two hundred dollars or by imprisonment for not less than thirty days, or by both such fine and imprisonment; and any person connected with any such agency who shall be convicted of making any sale or other disposition of liquor contrary to these provisions shall be punished by imprisonment for not less than one year and one day. Upon the admission of said State into the Union these provisions shall be immediately enforceable in the courts of said State."

That the constitution of the State of Oklahoma (Sec. 499 Bunn. Const. of Okla.) contains the following provisions with reference to the subject of intoxicating liquors:

"The manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within this State, or any part thereof, is prohibited for a period of twenty-one years from the date of the admission of this State into the Union, and thereafter until the people of the State shall otherwise provide by amendment of this Constitution and proper State Legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale and wine, contrary to the provisions of this section, or who shall, within this State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from one place within this State to another place therein, except the conveyance of a law

ful purchase as herein authorized, shall be punished, on conviction thereof, by fine not less than fifty dollars and by imprisonment not less than thirty days for each offense; Provided,

33 That the Legislature may provide by law for one agency under the supervision of the State in each incorporated town of not less than two thousand population in the State; and if there be no incorporated town of two thousand population in any county in this State, such county shall be entitled to have one such agency, for the sale of such liquors for medicinal purposes; and for the sale, for industrial purposes, of alcohol which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum not less than one thousand dollars, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the State shall constitute prima facie evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the liquor is to be used, and no sale shall be made for medicinal purposes, except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a bona fide prescription signed by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered, and the register thereof, together with the affidavits and prescription pertaining thereto, shall be open to inspection by any officer or citizen of the State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for treatment of disease which after his own personal diagnosis he shall deem to require such treatment, shall, upon conviction thereof, be punished for each offense by fine of not less than two hundred dollars or by imprisonment for not less than thirty days, or by both such fine and imprisonment; and any person connected with any such agency who shall be convicted of making any sale or other disposition of liquor contrary to these provisions shall be punished by imprisonment for not less than one year and one day. Upon the admission of this State into the Union these provisions shall be immediately enforceable in the courts of the State."

That the First Legislature of the State of Oklahoma passed an Act which was approved on the 24th day of March, 1908, and is known among the Acts of said Session of said Legislature as Senate Bill No. 61, of which said Act Sections one, two, three, five,

six, fourteen, nineteen "A," twenty and twenty-four of Article III. thereof, are in words and figures as follows:

SEC. 1. It shall be unlawful for any person, individual or corporate, to manufacture, sell, barter, give away, or otherwise furnish except as in this act provided, any spirituous, vinous, fermented or malt liquors, or any imitation thereof, or substitute therefor; or to manufacture, sell, barter, give away, or otherwise furnish any liquors or compounds of any kind or description whatsoever, whether medicated or not, which contains as much as one-half of one per centum of alcohol, measured by volume, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States; or to ship or in any way carry such liquors from one place within this state to another place therein except the conveyance of a lawful purchase as herein authorized, or to solicit the purchase or sale of any such liquors, either in person or by sign, circular, letter, card, price list, advertisement, otherwise, or to distribute, publish or display any advertisement, sign, or notice where any such liquor may be manufactured, bartered, sold, given away, or otherwise furnished, or to have the possession

34 of any such liquors with the intention of violating any of the provisions of this Act. A violation of any provisions of this Section shall be a misdemeanor, and shall be punished by a fine not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) and by imprisonment for not less than thirty days nor more than six months; Provided, however, that the provisions of this Act shall not apply to the manufacture and sale of unfermented cider and wine, made from apples, grapes, berries or other fruit, grown in this State, and to the use of wine for sacramental purposes, in religious bodies.

SEC. 2. The payment of the special tax required of liquor dealers by the United States by any person within this State except local agents appointed as hereinbefore provided, shall constitute prima facie evidence of an intention to violate the provisions of this Act.

SEC. 3. Every person who shall within this State, directly or indirectly, keep or maintain by himself, or by associating or combining with others, any club room or other place in which any liquor, the sale of which is prohibited by this Act, is received or kept for the purpose of selling, bartering giving away or otherwise furnishing, or for distribution or division among the members of any club or association, by any means whatsoever, and every person who shall sell, barter, give away, or otherwise furnish, distribute or divide any such liquor so received or kept shall be guilty of a misdemeanor.

SEC. 5. If it shall be made to appear to any judge of the District or County Court or justice of peace that there is probable cause to believe that liquors are being manufactured, sold, bartered, given away, or otherwise furnished, or are being kept for the purpose of selling, bartering, giving away or otherwise furnishing liquors in

violation of this Act, such judge or magistrate shall issue a warrant directed to any officer of the county whom the complainant may designate, having the power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant and to seize all such liquors there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away, or otherwise furnishing of such liquors, and safely keep the same and to make return within three days of said warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession the same was found, if any, and if no person be found in the possession of said property, his return shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such liquors, furniture or fixtures so seized, and if no person be found in possession thereof a copy of said warrant shall be posted on the door of the building or room wherein the same are found.

SEC. 6. Upon the return of such warrant as provided in the next preceding section, the magistrate or judge shall fix a time, not less than ten days nor more than thirty days thereafter, for hearing of said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof was used in violation of any of the provisions of this Act. At such hearing any party claiming an interest in any such property may appear and be heard, and if upon such hearing it shall appear that any property so seized was knowingly used, or permitted to be used, in violation of any provisions of this Act, the same shall be adjudged forfeited to the State, and shall be delivered to the custody of the Superintendent to be disposed of under the provisions of this Act. If upon such hearing it shall appear that any property so seized was not kept or used for an unlawful purpose, or if any person shall show that he is the owner of any furniture fixtures or other property seized under such warrant, and that the same or any part thereof were unlawfully used without his knowledge or consent, the same shall be returned to its lawful owner.

SEC. 14. All places where liquors of any kind are manufactured, sold, bartered, given away or otherwise furnished in violation of any of the provisions of this Act, are hereby declared to be public nuisances and shall be abated in the manner provided by law at the suit of any citizen of the State.

35 SEC. 19A. Any officer, agent or employee of the railroad company, express company, or other common carrier, who shall knowingly carry or deliver any liquors, the sale of which is prohibited by this Act, to or for any person to be sold, bartered, given away or otherwise furnished in violation of this Act, shall be guilty of a misdemeanor. Any such officer, agent or employee who shall knowingly deliver any such liquors to any person other than the person to whom it is consigned and without a written order in each instance of the consignee thereof shall be guilty of a misdemeanor.

SEC. 20. It shall be unlawful for any railroad, or other common

carrier, or agent thereof, or any other person, individual or corporate, to ship, receive, transport, carry, handle or deliver any liquors the sale of which is prohibited by this Act under a false or fictitious name or title, and any person who shall knowingly violate any provisions of this section shall be deemed guilty of a misdemeanor and all liquors shipped under any such fictitious name or title, or to a fictitious person, shall be forfeited to the State.

SEC. 24. The Governor shall have power to appoint an attorney who shall have been a resident in this state for at least two years, and shall have been a lawyer licensed by some court of record for at least five years, who shall be known as Counsel to the Governor. He shall, under the directions of the Governor, assist in enforcing the provisions of this Act, and the other laws of the State, and shall perform such other duties as the Governor may, from time to time, require. He shall have all the power of county attorneys in their respective counties. He shall hold office during the pleasure of the Governor, and shall give bond, to be approved by him, conditioned for the faithful discharge of his duties, in the sum of Three Thousand Dollars (\$3,000) and shall receive a salary, to be fixed by the Governor of not more than Twenty-five hundred dollars (\$2,500) per annum, payable monthly; Provided, that in lieu of, or in addition to, appointing such attorney, the Governor may call upon the Attorney General or his assistant to perform such service.

Fourth. That on the 15th day of June, 1908, your orator was duly appointed and commissioned by Charles N. Haskell, as Governor of the State of Oklahoma, to the office of Counsel to the Governor, as provided by said Section 24, Article III, of said statute of the State of Oklahoma hereinabove set forth; and thereupon your orator duly qualified for said office and entered upon the discharge of the duties thereof and ever since has been such duly constituted, qualified and acting Counsel to the Governor under the terms and provisions of said Act.

Fifth. That, as appears from "Record Ten" in the office of the United States Internal Revenue Collector for the District of Kansas, at Leavenworth, in the State of Kansas, of which said District the State of Oklahoma is a part, a great many persons within the State of Oklahoma have paid the special tax required of liquor dealers by the United States, all of which, together with the names of said persons and their places of residence is more fully made to appear by "Schedule A" hereto attached and hereby referred to and made a part of this cross-complaint as fully and to the
36 same extent as though fully set out herein.

Sixth. That intoxicating liquors which are possessed or in any manner held or kept within the State of Oklahoma for the purpose of, or with the intention on the part of the person so possessing, holding or keeping the same to use or in any manner dispose of the same or any part thereof in violation of the laws of said State hereinabove set forth, constitute and are a public nuisance, the abatement of which is one of the official duties specifically imposed upon and enjoined of your orator.

Seventh. That the great bulk of complainant's said interstate business in the transportation of intoxicating liquors consists in the transportation of such liquors by complainant from points outside of the State of Oklahoma to points inside said State to be there delivered to and placed in the possession of persons such as those named in "Schedule A" hereto attached, whose sole and only purpose it is to use and dispose of the same in violation of the laws of said State hereinabove set forth, including said Act of Congress commonly known and designated the "Enabling Act." Wherefore, your orator says that by the performance of the last act in each of said interstate commerce transactions, viz: the delivery to the consignee whereby complainant places said intoxicating liquors in the possession of said consignee, complainant thereby creates a public nuisance in said State, and makes a criminal of said consignee.

Eighth. That while it is the duty of your orator as such officer of the State of Oklahoma, as hereinabove set forth, to abate and prevent the creation of such liquor nuisances as those created by complainant in manner and form hereinabove set forth, yet your orator is powerless to do so and is wholly without any adequate remedy or any remedy at all at law in the premises, for the reason that complainant, as it seeks to do by this suit, shelters itself from the laws of the State of Oklahoma under the provisions of the Constitution of the United States commonly called the "commerce clause" by virtue of which the police powers of the State of Oklahoma do not attach, or operate upon said intoxicating liquors so transported from points outside to points inside said State and there delivered to the consignee, until after said delivery to said consignee, which is not until said liquor nuisances here complained of are
37 created and the mischief accomplished. Wherefore, your orator says that complainant's acts in so creating said liquor nuisances in said State result in great and irreparable injury to your orator, against which your orator is without any remedy at all at law, and all of which result to your orator's great and irreparable injury and loss in his said office of Counsel to the Governor, in that he is thereby prevented from successfully accomplishing the abolishment of said liquor nuisances in said State.

Ninth. That because of the quantities contained therein and the frequency with which they are made to the same person or persons and from other facts and circumstances, such as payment by the consignee of the special tax required of liquor dealers by the United States, complainant well knows, or by a reasonable exercise of ordinary intelligence and common sense, could easily ascertain what shipments of intoxicating liquors tendered to it for transportation from points outside the State of Oklahoma to points inside said State, are intended by the consignees thereof to be used or disposed of in violation of the laws of said State, and thereby constitute and become public nuisances immediately upon their delivery by complainant to such consignee.

Tenth. Wherefore, your orator, to the end that he may obtain relief, to which he is justly entitled in the premises, prays this Honorable Court to grant to him your writ of subpoena directed to

The Atchison, Topeka and Santa Fe Railway Company requiring and commanding it to appear herein and answer, not under oath, answer under oath being hereby expressly waived, the several allegations in this Cross-Bill contained.

Eleventh. That your Honors grant unto your orator your writ of injunction commanding The Atchison, Topeka and Santa Fe Railway Company, its servants, agents, employees and workmen and all persons claiming to act under its authority, direction or control, to absolutely desist and refrain from receiving for shipment to, and delivery at any point or place within the State of Oklahoma, and from transporting, or in any manner conveying from points outside to a point inside said State of Oklahoma any intoxicating liquor of any kind, including beer, ale and wine and any liquors

38 or compounds of any kind or description whatsoever, whether medicated or not, which contain as much as one-half of one percentum of alcohol, measured by volume, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacists, the sale of which would not subject him to the payment of the special tax required by the Laws of the United States, which said liquors or compounds are consigned to, or to the order of, any person within said State of Oklahoma who has paid the special tax required of liquor dealers by the United States, or, which said liquors or compounds are shipped with instructions to notify any person who has paid the special tax required of liquor dealers by the United States of their arrival at the point of destination, or, which said liquors or compounds are intended by the person, or persons receiving the same from The Atchison, Topeka and Santa Fe Railway Company at the point of destination within said State of Oklahoma, to be used or in any manner disposed of in violation of the laws of said State, and from receiving for shipment or transportation, or in any manner conveying such liquors or compounds to any point within the State of Oklahoma in such quantities or under such circumstances as render it improbable that the same are intended for the individual consumption of the consignee or person receiving delivery of the same from The Atchison, Topeka and Santa Fe Railway Company, and, from permitting any such liquors or compounds which have been by it transported or conveyed to a place within the State of Oklahoma, to be and remain within any of its cars, sheds or depots or upon its premises, after the consignee or person to whom delivery is to be made, has had a reasonable opportunity to remove the same therefrom, and from issuing its bill, or bills of lading covering shipments of such liquors or compounds, and in which the name of the actual consignee does not appear, and from issuing more than one bill of lading for any shipment of such liquors or compounds, which are to go forward on the same way-bill and are intended for the same consignee.

Twelfth. Your orator further prays for such other and further relief, both preliminary and final, as to your Honors and this Honorable Court may seem equitable and proper in the premises, and for all costs of this suit.

FRED S. CALDWELL,

Attorney for Self.

39

Verification.

STATE OF OKLAHOMA.

Western District, ss:

Fred S. Caldwell, of lawful age, being first duly sworn, on oath,
says:

That he is the orator in the foregoing cross-complaint, which said cross-complaint he has carefully read; that he knows the statements and allegations contained in said cross-complaint and verily believes the same to be true and correct.

FRED S. CALDWELL.

Subscribed and sworn to before me this 7th day of December,
1908.

[SEAL.]

HARRY L. FINLEY,

Clerk U. S. Circuit Court.

40-59 (Schedule "A" omitted herefrom.)

Endorsed: No. 276. U. S. Circuit Court Western District. A. T. & S. F. Ry Co. vs. Fred Caldwell, Charles C. Post and Roy D. Holcomb. Answer and Cross-Complaint. Filed Dec. 7th 1908, Harry L. Finley, Clerk. Pl'ff consents for d'fts to answer out of time. Cottingham & Bledsoe.

60 In the Circuit Court of the United States for the Western
District of Oklahoma.

No. 276. In Equity.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, Com-
plainant,

vs.

FRED S. CALDWELL, CHARLES C. POST, ROY D. HOLCOMB, Defendants.

Demurrer to Cross-Complaint.

The Plaintiff the Atchison, Topeka and Santa Fe Railway Company, especially demurs to that part of the answer of the defendant, Fred S. Caldwell styled "Cross-Complaint", because said Cross-Complaint states no fact which would entitle the Defendant to invoke the equity jurisdiction of this Court.

For said reasons, plaintiff also specifically demurs to each of the following paragraphs of said Cross-Complaint, to-wit:

Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh.

COTTINGHAM & BLEDSOE,

Attorneys for Plaintiff.

STATE OF OKLAHOMA,
Logan County, ss:

S. T. Bledsoe, being first duly sworn on oath says that he is Solicitor for the plaintiff in the above entitled action, and that in his judgment the foregoing Demurrer is well taken in point of law, and on behalf of the Plaintiff says that the same is not interposed for delay, the Plaintiff being a foreign corporation.

S. T. BLEDSOE.

Subscribed and sworn to before me this 11th day of December, 1908.

A. E. SWANK,
Notary Public.

My Commission Expires Jan. 12-1909

Endorsed: 276 Equity. In the Circuit Court of the United States for the Western District of Oklahoma. The A. T. & S. F. R. Co., Plaintiff Vs. Fred Caldwell, et al, Defendants. Demurrer to Cross Complaint. Filed Dec. 11th, 1908. Harry L. Finley, Clerk.

61 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 276. In Equity.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
Complainant,

vs.

FRED S. CALDWELL, Defendant.

Order Sustaining Demurrer to Cross-Bill,

On this, the 12 day of June, A. D. 1909, came on to be heard demurrer of the plaintiff to the cross bill of the defendant, Fred S. Caldwell, herein, and after hearing the same and being fully advised in the premises the court is of the opinion that the defendant is not entitled to any relief because of the allegations contained in said cross-bill and the demurrer of the plaintiff thereto is sustained.

JOHN H. COTTERAL, *Judge.*

Endorsed: 276. In the Circuit Court of United States for the Western District of Oklahoma. No. 276. In Equity. The Atchison, Topeka and Santa Fe Railway Company, Complainant, vs. Fred S. Caldwell, Defendant. Order Sustaining Demurrer to Cross-Bill. Cottingham & Bledsoe, Attorneys for Complainant. Filed June 19, 1909. Harry L. Finley, Clerk, By Guy R. Gillett, Dep'y.

62 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 276. In Equity.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
Complainant,

vs.

FRED CALDWELL, CHARLES C. POST and ROY D. HOLCOMB,
Defendants.

Replication of the Atchison, Topeka and Santa Fe Railway Company, the Plaintiff to the Answer of Fred S. Caldwell.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said answer for replication thereunto saith that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

COTTINGHAM & BLEDSOE.

Attorneys for Plaintiff.

Endorsed: 276. In Equity. In the Circuit Court of the United States for the Western District of Oklahoma. The A. T. & S. F. Ry. Co., Plaintiff, vs. Fred Caldwell, et al, Defendants. Replication of Plaintiff to Answer of Fred S. Caldwell. Filed June 19, 1909. Harry L. Finley, Clerk, by Guy R. Gillett, Dep'y.

63 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 276. In Equity.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
Complainant,

vs.

FRED CALDWELL, CHARLES C. POST and ROY D. HOLCOMB,
Defendants.

Replication of the Atchison, Topeka and Santa Fe Railway Company, the Plaintiff, to the Answer of Charles C. Post and Roy D. Holcomb.

The repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of said

answer for replication thereunto saith that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays as in and by its bill it has already prayed.

COTTINGHAM & BLEDSOE,

Attorneys for Plaintiff.

Endorsed: 276. Equity. In the Circuit Court of the United States for the Western District of Oklahoma. The A. T. & S. F. R. Co., Plaintiff, vs. Fred Caldwell, et al, Defendants. Replication of Plaintiff to answer of Charles C. Post and Roy D. Holcomb. Filed June 19, 1909. Harry L. Finley, Clerk, by Guy R. Gillett, Dep'y.

64 In the Circuit Court of the United States for the Western District of Oklahoma.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.

ROBERT E. LOZIER, FRED S. CALDWELL, C. S. WORTMAN, ROY D. Holcomb, C. T. WARDEN, R. S. MOORE, H. C. BERWICK and JOHN BURROWS, Defendants.

The Missouri, Kansas & Texas Railway, a public service corporation, organized under the laws of the State of Missouri, and having its residence therein, brings this bill of complaint against the defendants, Robert E. Lozier, Fred S. Caldwell, C. S. Wortman, Roy D. Holcomb, C. T. Warden, R. S. Moore, and H. C. Berwick, citizens of the State of Oklahoma, and inhabitants of the Western District of said State.

1. Therefore, your orator complains and says; that it is now and has been for many years past, a common carrier of goods for hire, engaged in the transportation of all classes of goods that may be lawfully transported from one state into another, as well as points within the State of Oklahoma, to points within said State, and as such common carrier, it has built up an extensive and valuable business.

2. That as a common carrier of goods for hire, it is its duty to accept for transportation, from points outside of the State to points inside of the State, intoxicating liquors of various kinds, including beer, wines, whiskey, etc.; that it is equally the duty of said complainant to accept for transportation, from points inside the state to points outside the State, goods and property of different kinds, including beer, wines, whiskey and other intoxicating liquors; that it cannot legally refuse because of its position as a common carrier, to receive any shipments and to transport from points either within

65 or without the State to points in or without the State, goods
and property of the character mentioned, in the ordinary
course of business; that in the past six months, it has had
tendered to it, and accepted, large quantities of the kinds of goods
mentioned, for shipment, from points outside of the State to points
inside the State from which it has received large revenues, to-wit:
more than the sum of Two Thousand Dollars (\$2,000.00) per an-
num, exclusive of interest and costs.

3. That when said goods are tendered to it for shipment it is
required by law to issue its bill of lading therefor whereby it binds
itself to transport said goods and deliver the same to the consignee
mentioned in the bill of lading, at the point of destination of said
shipment, and that if it fails to so deliver said goods to said con-
signee so mentioned therein, it becomes liable for damages to the
said consignee for the value of said goods and suit may be main-
tained against it therefor.

4. That owing to the large amount of said class of goods that
has heretofore been shipped, and that will hereafter be shipped, the
value of the business of handling and transporting said goods, is
worth to this, your orator, far in excess of the sum of Two Thousand
Dollars (\$2,000.00); exclusive of interest and costs that the defend-
ants herein have repeatedly inter-fered with the business of your
orator in these shipments constituting interstate shipments of in-
toxicating liquors; have interfered with and prevented your orator
from making delivery of said goods; that they have lately conspired
together, and do no- conspire together to prevent and are prevent-
ing by their concerted action, the delivery by your orator of more
than One Thousand Dollars worth of goods, which it has received
for shipment, in the State of Oklahoma, to points outside of the
State.

5. That your orator will continue to be compelled to receive large
quantities of merchandise of the character mentioned which in the
course of the year, exceed the sum of many thousands of dollars
and the earnings on which, will be worth, to your orator.
66 more than the sum of Two Thousand Dollars exclusive of
interest and costs that the defendants herein, conspiring to-
gether, are harassing and inte-fering with the business of your orator
in the transportation and delivery of the character of goods men-
tioned, to-wit: intoxicating liquors which your orator is required,
by law, to accept and receive for transportation and to transport
either from points within the State to points without State, or from
points without the State to points inside of the State, until they
have seriously imparied said business and have involved your orator
in a multiplicity or law suits with parties who have lawfully tendered
to it for shipment, such character of merchandise and to whom it
is required to issue its bill of lading and for whom it is required to
handle and transport said merchandise as interstate commerce.

6. That said defendants, conspiring together, have been in the
habit of entering the freight depots of your orator herein and seiz-
ing such intoxicating liquors transported or accepted for transporta-

tion in the ordinary course of business, and preventing the shipment or delivery thereof to the consignees.

7. Your orator further complains that the said defendants have been in the habit, for the purpose of harassing your orator in the discharge of its duty as aforesaid, of swearing out search warrants, or causing the same to be sworn out, for the purpose of searching the depots, storage rooms and cars of your orator, not in good faith, but for the purpose of interfering with your orator in the discharge of its duties as a common carrier of interstate shipments of goods.

8. That it is the purpose of said defendants to continue said wrongs until they have destroyed or greatly damaged the transportation business of your orator in the handling of intoxicating liquors as interstate commerce and that the value of said business and the right to handle the same, is in excess of the sum of two

Thousand dollars (\$2,000.00) exclusive of interest and costs.
67 9. That the continuance of said course above complained of, will involve your orator in a multiplicity of law suits and will damage your orator in a sum exceeding Two Thousand Dollars \$2,000.00 exclusive of interest and costs.

10. Your orator represents and shows that under the Constitution and laws of the United States, it is lawfully engaged in the transportation in the ordinary course, of business, of intoxicating liquors from and to interstate points and that the defendant, by their course herein complained of, are seeking to deny said right and to deprive your orator of the right so guaranteed to it by the Constitution and laws of the United States and that you- orator is entitled to be protected in said right, by the orders and judgment of this Court.

11. Your orator further avers that the defendants, one or all of them, and particularly the defendant Fred S. Caldwell, is engaged in the unlawful pursuit of going from point to point in the State and aiding and abetting, assisting and advising and encouraging various and sundry persons to unlawfully interfere with the exercise of the duties and privileges of your orator as a common carrier, by then and there causing said persons to interfere and attempt to interfere with the shipment and delivery of intoxicating liquors as interstate business by your orator, by causing and inducing such persons to go into depots and cars of your orator and then and there seizing and attempt to confiscate such interstate shipments of intoxicating liquors and that said defendants are pursuing said course with full knowledge of the fact that the same is in violation of law and for the preconceived purpose of harassing your orator herein and thereby subjecting it to great and irreparable injury.

12. That when they secure possession of any intoxicating liquors from your orator, under the circumstances herein detailed
68 they undertake by some character of proceeding, to confiscate the same in violation of the Constitution of the United States with reference to commerce between states and the laws of the United States enacted pursuant thereto.

13. That by reason of the wrongs and injuries already done and

by reason of the fact that said wrongs and injuries will be continued in the manner and from heretofore complained of, your orator has been greatly damaged in excess of Two Thousand Dollars that it has suffered irreparable injury in the conduct of its business; that it has no adequate relief at law from the wrongs and injuries herein complained of and unless protected by the order of this Court, it will continue to suffer great and irreparable injury at the hands of the said defendants and those whom they incite *adn* abet to a like conduct.

14. Your orator represents and shows that on September 17, 1908, one A. B. B. Co. at the City of St. Louis, in the State of Missouri, delivered to your orator, for shipment and transportation in the ordinary course of business, one car load of beer consigned to D. M. Blunk, at Oklahoma City, in the State of Oklahoma that on September 19th, your orator having transported said car of beer from St. Louis to Oklahoma City as aforesaid, delivered said car of beer to the said consignee, D. M. Blunk; that said car of beer remained on the tracks of your orator at Oklahoma City until the morning of September 23rd 1908, excepting that about 40 barrels of said beer had been removed therefrom in the meantime at which time said D. M. Blunk tendered said car of beer consisting of 78 barrels, to your orator for shipment to one L. A. Fleenor, at Gainesville, in the State of Texas; that your orator is an interstate carrier as aforesaid, with lines of railroad from the State of Missouri unto the State of Oklahoma and from Oklahoma City in the State of Oklahoma into the State of Texas and that by the laws in such case made and provided, your orator was required to accept said
69 car of beer for transportation and shipment from Oklahoma City into the State of Texas and to issue therefor, in the ordinary course, a bill of lading; that your orator accepted said car for shipment as aforesaid and issued therefor, in the ordinary course, a bill of lading showing that said car was consigned to L. A. Fleenor at Gainesville, in the State of Texas, that thereupon your orator having accepted said car from the said D. M. Blunk, sealed and weighed the same and moved and lined the same up in the usual manner, for transportation by one of your orator's regular trains; that while said car was being switched and handled by your orator, to be connected with its said regular train for shipment as aforesaid, the said defendant Roy D. Holcomb, above named, boarded said car and remained upon it while it was being moved and switched as aforesaid, and that about noon on said 23rd day of September, the said defendants broke the seals on said car, entered the same and sampled the contents thereof; that at said time, said car, with its contents was in the custody and possession of your orator and was actually being handled and moved by your orator for attachment to your orator's regular Texas train and that the same was under bill of lading as aforesaid that thereupon your orator notified and advised said defendants that said car, the same being number 1019, New York, Philadelphia & Norfolk Railway, was in the custody of your orator to be drawn and moved with its contents, as aforesaid from Oklahoma City to Gainesville, in the

State of Texas, and was covered by an interstate bill of lading duly issued by your orator as aforesaid and requested and demanded that said defendants desist from interfering with said shipment, but that the said defendants in defiance and disregard of said notice, and with full knowledge of the facts, as herein detailed, wrongfully refused to desist from said interfering and that said defendants have wrongfully and forcibly taken possession of said car and its contents and do now hold and detain the same and are preventing

your orator from transporting said car and its contents from Oklahoma City to Gainesville, as called for and required by said bill of lading; that no copy of any warrant for the seizure of said car nor any other paper of any kind or character was served upon your orator in connection with the seizure of said car and its contents that the action of said defendants as aforesaid is wrongful and without authority of law, and it without any claim or pretense of right on the part of said defendants, except that the beer in said car is an intoxicating liquor and that solely by reason of said fact they have the right to seize said car; that said defendants do not claim to own said beer or to have any interest therein or to have any right to seize the same other than arising out of the following condition; said defendants claim to be officers of the State of Oklahoma and to have the right to seize said car of beer solely by reason of the fact that it is an intoxicating liquor and is within the borders of said State. Your orator avers that it has no interest in said beer save and except as a common carrier as aforesaid and that it received said beer for no other purpose than to transport the same from Oklahoma City in the said State of Texas to Gainesville, in the State of Texas and said defendants claim that they have seized said beer for the purpose of confiscating the same under the laws of said State; and said defendants will, unless restrained by the order of this court, prevent the shipment of said beer as aforesaid, and will confiscate the same, wrongfully and without authority of law. That said beer is now stored in the warehouse of John Burrows at Oklahoma City.

15. Your orator denies the right of said defendants to seize said car of beer under the circumstances herein narrated and denies the right of said defendants to interfere with the shipment of said beer under the said bill of lading, for the reason that said beer was at said time, an interstate shipment and in the possession of your orator for no wrongful or unlawful purpose, but solely for shipment as aforesaid.

71 16. Your orator represents that it is by law required to transport said beer speedily and with due despatch and that it cannot do so so long as it is interfered with by the defendants in the manner herein complained of; and your orator avers that if it fails to transport and deliver said car of beer as provided and contracted for in said bill of lading, that it will be subjected to great loss and damage on account of its failure to so transport and deliver said car.

17. Your orator charges and believes that the defendants herein are not financially able to respond in damages for the large sum

of money in which it will be damaged by reason of the wrongs and injuries heretofore brought upon it and to be practiced upon it by said defendants; and that your orator has no complete, sufficient and adequate remedy against the defendant, except by injunction and the summary process of the Court.

Wherefore, your orator prays that process be duly issued directed to said defendants commanding them to appear and answer in accordance with law and the rules of this court, answer under oath being hereby specially waived, and that pending said time a temporary injunction be granted restraining the defendants and each of them, from entering the depots, cars or other storage places of your orator and taking therefrom intoxicating liquors held by your orator as interstate shipments in the ordinary course of business; that they be enjoined from interfering with the shipment of said car of beer from Oklahoma City to Gainesville in the State of Texas; that said defendants be enjoined from interfering with your orator in the handling of interstate shipments of intoxicating liquors either to points within or without the state and that they be enjoined from seizing or swearing out search warrants for seizing such interstate shipments; that they be enjoined from inciting other persons or aiding,

72 ing, abetting or advising them to do likewise and that upon the final hearing said injunction be made perpetual. In the meantime and until this application for a temporary injunction can be heard, your orator prays that said defendants may be restrained from confiscating destroying or removing said car of beer, or any part thereof, from out of the jurisdiction of the Court and your orator prays for such other and further relief as in equity and good conscience it may be entitled to.

MISSOURI, KANSAS & TEXAS
RAILWAY COMPANY,

By C. L. JACKSON &
C. G. HORNOR,

Its Solicitors.

STATE OF OKLAHOMA,

Oklahoma County, ss:

I, C. L. Maguire, being duly sworn upon oath, state: That I am an agent of the Missouri, Kansas & Texas Railway Company; that it is a corporation; that none of its general officers are present in the State to make this affidavit; that I know the contents of the above and foregoing petition and complaint, and that the allegations therein are true, of my own knowledge.

C. A. MAGUIRE.

Subscribed and sworn to before me this the 3rd day of October, 1908.

[SEAL.]

WM. H. WINN,
Notary Public.

My commission will expire August 5th 1912.

STATE OF OKLAHOMA.

Logan County, ss:

C. G. Hornor, being first sworn upon his oath, says: That he is the agent and attorney of the Missouri, Kansas and Texas Railway Company, complainant above named, and that the value of interstate business of said complainant as a common carrier, referred to in the foregoing bill as being interfered with impaired and injured by the defendants, and threatened to be impaired and injured by them, is worth to said complainant, in excess of Two Thousand

Dollars (\$2,000.00) exclusive of interest and costs. Affiant further states that your complainant is a corporation, organized and existing under the laws of the State of Missouri and that the general officers of said complainant reside outside of the State of Oklahoma and affiant makes this affidavit for and on behalf of complainant, being authorized thereunto, and that this affidavit is made upon the information and belief of affiant, and that affiant believes the same to be true. Affiant further states that the allegations of said bill in regard to the value of the interstate business of complainant and the value of the right involved herein, are true as affiant verily believes; That this affidavit is made upon information and belief, and that affiant believes the same to be true.

C. G. HORNOR.

Subscribed and sworn to before me this the 30th day of October

[SEAL.]

MABEL L. GLOVER,

Notary Public

My commission will expire October 12th 1912.

#329. Missouri Kansas & Texas Ry. Co. vs. Robert E. Loizer et alios. Bill of complaint. Filed Oct. 30th 1908, Harry L. Finley, Clerk. C. L. Jackson, C. G. Hornor, Solicitors.

73 In the Circuit Court of the United States for the Western District of Oklahoma.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant

v

ROBERT E. LOIZER et alios, Defendants.

Motion.

Comes now the complainant by its solicitors and moves the court to grant complainant a temporary injunction herein upon the verified Bill of Complaint, and pending the hearing of this application that complainant be granted a temporary restraining order.

MISSOURI, KANSAS & TEXAS
RAILWAY COMPANY.

C. L. JACKSON, AND

C. G. HORNOR,

Solicitors.

#320. M. K. & T. Ry. Co. v. Robert E. Lozier, et Alios. Motion for temporary injunction & restraining order. Filed Oct. 30th, 1908. Harry L. Finley, Clerk. L. C. Jackson & C. G. Hornor, Solicitors.

74 In the Circuit Court of the United States for the Western District of Oklahoma.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.

ROBERT E. LOZIER, FRED S. CALDWELL, C. S. WORTMAN, ROY D. Holcomb, C. T. Warden, R. S. Moore, H. C. Burwick and John Burrows, Defendants.

Restraining Order.

Whereas, in the above named cause, it has been made to appear upon the bill of complainant, supported by the affidavit of C. L. Maguire and C. G. Hornor, that a writ of injunction, preliminary to the final hearing, is proper, and that prima facie the complainant is entitled thereto, enjoining the defendants herein from the acts complained of and threatened to be committed,

Now, on motion of said complainant, it is ordered that Wednesday the Fourth day of November, 1908, at the hour of 9 o'clock A. M. be fixed as the time for hearing said application and that at said time, the said defendants, if they so desire, appear before the Judge of said Court, at his Chambers, in the City of Guthrie, and then and there show cause if they have any, why the preliminary injunction therein prayed for, should not issue, and it appearing to the undersigned Judge of the United States District Court, for said District, that there is danger of irreparable injury being caused to the complainant, before the hearing of said application for the preliminary writ of injunction can be heard unless the said defendants are, pending such hearing, restrained as hereinafter set forth.

Therefore, it is ordered that the said defendants and each and all of them, and their agents, servants, attorneys and all persons acting under or by their authority or direction, be, and they
75 are hereby specially restrained and enjoined from Making seizure of any shipment of wines, whiskies, beers and other intoxicating liquors, originating bona fide outside of the State of Oklahoma, and consigned to points within said State in the course of interstate commerce, and before the delivery of the same to the consignees thereof, at the given points of destination within said State, and said defendants are hereby enjoined and restrained from interfering with such shipments prior to delivery as aforesaid, and from interfering with the delivery of such shipments to the consignees thereof within said State. This order to stand and be in force until the further order of the Court or Judge thereof.

It is further ordered that a copy of this order certified under the

hand of the Clerk and seal of this Court be served on each of the defendants to be restrained thereby.

Dated at Guthrie, in the Western District of Oklahoma, this 30th day of October, 1908.

JOHN H. COTTERAL,
District Judge of the Western District of Oklahoma.

#329. Missouri, Kansas & Texas Ry. Co. vs. Robert E. Lozier, et al. Restraining Order. Filed Oct. 30th 1908. Harry L. Finley, Clerk.

76 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 329. In Equity.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
vs.

ROBERT E. LOZIER, FRED S. CALDWELL, C. S. WORTMAN, ROY D. HOLCOMB, C. T. WARDEN, R. S. MOORE, H. C. BURWICK and JOHN BURROWS, Defendants.

The Joint and Several Answer of Robert E. Lozier, C. S. Wortman, Roy D. Holcomb, C. T. Warden, R. S. Moore, H. C. Burwick and John Burrows, Seven of the Defendants, to the Bill of Complaint of the Missouri, Kansas and Texas Railway Company.

These defendants respectively, now and at all times hereafter saving to themselves all and all manner of benefit or exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering say:

1. These defendants severall- admit all the statements and allegations contained in paragraph one of said bill of complaint, but specifically deny that as such common carrier of goods for hire it is complainant's duty to accept for transportation, from points outside of the State of Oklahoma to points inside of the State of Oklahoma, intoxicating liquors generally and without regard to the purpose for which said intoxicating liquors are being brought into said State, and the use to which they are to be put by the consignee thereof, as alleged and contended in the first part of paragraph two of said bill of complaint. These defendants further admit

77 that in the six months immediately preceding the filing of said bill of complaint, complainant had tendered to it and accepted large quantities of intoxicating liquors for shipment from points outside of the State of Oklahoma to points inside the State of Oklahoma, from which it received large revenues, to-wit, more than the sum of Two Thousand Dollars per annum exclusive of interest and cost; but, these defendants say that by far the greater portion of such intoxicating liquors so received by complainant and

transported into the State of Oklahoma were knowingly received by it and transported into said State of Oklahoma to be there delivered to sundry and divers persons for the sole and express purpose of being used in violation of the laws of said State, to-wit: in violation of the Constitution of said State and in violation of an Act passed by the First Legislature of said State and approved on the 24th day of March, 1908, and known among the Acts of said First Legislature as Senate Bill No. 61.

2. As to paragraph three of said bill *fo* complaint these defendants severally deny that when intoxicating liquors are tendered to complainant for shipment into said State of Oklahoma it is required by law to issue its bill of lading therefor, whereby it binds itself in manner and form as stated in said paragraph three, except as to such intoxicating liquors as are not intended to be used in violation of the laws of said State upon being transported therein by complainant and ther- deliver- to the consignee.

3. As to paragraph four of said bill of complaint these defendants severally say: That they have never knowingly, or intentionally interfered, in any manner, with interstate shipments of intoxicating liquors while in the possession of complainant
78 as an interstate common carrier, and prior to the attaching of the police powers of the State of Oklahoma to and upon the same; and that all acts either done or performed by them or any of them touching any such matters were done and performed under due legal process of some court or tribunal of competent jurisdiction of said State of Oklahoma, and in the execution of the police laws and regulations of said State after such intoxicating liquors had become subject to the exercise thereof; and these defendants further deny that they have ever, in any manner or form whatsoever, conspired together to interfere with, in any manner, or to any degree whatever, the prosecution by complainant of its business as an interstate common carrier.

4. As to paragraph five of complainant's bill of complaint these defendants severally say; That they have no knowledge concerning the quantities of intoxicating liquors which, in the course of a year, will be tendered to complainant for transportation from points outside the State of Oklahoma to points inside of said State, and which are not intended by the person or persons receiving the same from complainant at the point of destination to be used in violation of the laws of said State; but these defendants specifically deny that complainant is or will be compelled to receive and carry intoxicating liquors of any character or sort, except such as are not intended by the person or persons to whom delivered at the point of destination to be used in violation of the laws of said State; and these defendants expressly deny that they, or any of them, are conspiring together, or have at any time conspired together, or that they or any of them are harassing or interfering with or have ever harassed
79 or interfered with the business of complainant as such interstate common carrier as alleged and charged in the latter part of said paragraph five of said bill of complaint.

5. As to paragraph six of said bill of complaint these defendants

severally say: That they deny each and every allegation and statement therein contained.

6. As to paragraph seven of said bill of complaint these defendants severally deny each and every statement and allegation in said paragraph contained.

7. As to paragraph eight of said bill of complaint these defendants severally say: That they deny each and every statement and allegation therein contained.

8. As to paragraph nine of said bill of complaint these defendants severally say: That they deny each and every statement and allegation therein contained.

9. As to paragraph ten of said bill of complaint these defendants severally say: That they deny that they, or any of them, ever have at any time sought or undertaken, either by word or deed, to deprive complainant of or injure it in any of its rights guaranteed to it by the Constitution and the laws of the United States.

10. As to paragraph eleven of said bill of complaint these defendants severally say: That they deny that they or any of them are, or have been, engaged in any unlawful pursuit, and particularly do they deny that they or any of them have been engaged in going from point to point in the State of Oklahoma and aiding or abetting or assisting or advising or encouraging various and sundry persons to unlawfully interfere with the exercise of the duties and privileges of complainant as a common carrier, by then and there causing said persons to interfere, or attempt to interfere, with the shipment and delivery of intoxicating liquors which are the subject of complainant's interstate business, or by causing and inducing such persons to go into depots and cars of complainant's and then and there seize, or attempt to seize, and confiscate interstate shipments of intoxicating liquors.

11. As to paragraph twelve of said bill of complaint these defendants severally say: That they and each of them deny each and every allegation therein contained.

12. As to paragraph thirteen of said bill of complaint these defendants severally say: That they and each of them deny each and every allegation therein contained.

13. As to paragraphs fourteen, fifteen, sixteen and seventeen of said bill of complaint these defendants severally say: That the party referred to as "A. B. B. Co.," of St. Louis Missouri, is, as complainant well knows, the Anheuser Busch Brewing Company: That the said D. M. Blunk, of Oklahoma City, Oklahoma, was at the time of said transportation, as complainant well knew, or by the exercise of ordinary intelligence and observation might have known, engaged in the business of selling, distributing and otherwise furnishing and disposing of intoxicating liquors within said State of Oklahoma in violation of the laws thereof, and had paid the special tax required of liquor dealers by the United States, for which he held the receipt of the United States Internal Revenue Collector for the fiscal year 1908 and 1909, which fact constituted prima facie evidence of an intention on the part of him, the said D. M. Blunk, to use any and all intoxicating liquors of which he might become possessed in

violation of the law, as will more fully appear from Section 2, Article 111, of Senate Bill No. 61, passed by the First Legislature of the State of Oklahoma, and approved on the 24th day of March, 1908, which is in words and figures as follows:

801. "Sec. 2. The payment of the special tax required of liquor dealers by the United States by any person within this State, except local agents appointed as hereinabove provided, shall constitute prima facie evidence of an intention to violate the provisions of this Act."

That after said car load of beer was delivered at Oklahoma City by complainant to the said D. M. Blunk, on the 19th day of September, 1908, as alleged and stated by complainant in its bill of complaint, complainant wrongfully, wilfully and unlawfully then and there made and entered into a verbal agreement whereby the said D. M. Blunk obtained from complainant the use and occupancy of the car in which said beer then was for the consideration of \$1.00 per day, to be by him paid to complainant, said car to stand on complainant's tracks in its yard at said Oklahoma City and to be there used by the said D. M. Blunk for the storage of said beer until such time as the said D. M. Blunk should have sold the same out in open violation of the laws of said State of Oklahoma; that during the three days in which said car was so used by the said D. M. Blunk for the purpose of storing therein his said beer, to-wit; from the 19th to the 23rd day of September, as stated and alleged in complainant's said bill of complaint, he, the said D. M. Blunk, sold out and distributed therefrom in open violation of the laws of the State of Oklahoma, and with the knowledge, concert, acquiescence, connivance and approval of complainant, all of the forty barrels of said beer referred to in said bill of complaint as having been removed from said car after original delivery made by complainant to the said D. M. Blunk and prior to the time the same was billed to Gainesville Texas; that the reason why said car was billed to Gainesville Texas, as complainant well knows, is this, viz., that these defendants, or some of them, discovered the presence of said car after it has been delivered to the said D. M. Blunk, as stated in said bill of complaint, and also discovered that the same was
81 being used as a place of storage and that the beer stored therein was being sold and disposed of from day to day in violation of the laws of the State of Oklahoma, whereupon, they caused said beer then remaining in said car to be proceed- against in manner and from provided by Sections 5 and 6, Article III. of Senate Bill No. 61, the same being an Act of the First Legislature of the State of Oklahoma, approved on the 24th day of March 1908, which said Sections are in words and figures as follows:

"Sec. 5. If it shall be made to appear to any judge of the District or County Court or justice of peace that there is probable cause to believe that liquors are being manufactured, sold, bartered, given away, or otherwise furnished, or are being kept for the purpose of selling, bartering, giving away or otherwise furnishing liquors in violation of this Act, such judge or magistrate shall issue a warrant directed to any officer of the county whom the

complainant may designate, having the power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant and to seize all such liquors there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away or otherwise furnishing of such liquors, and safely keep the same and to make return within three days of said warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession the same was found, if any, and if no person be found in the possession of said property, his return shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such liquors, furniture or fixtures so seized, and if no person be found in the possession thereof a copy of said warrant shall be posted on the door of the building or room wherein the same are found."

"Sec. 6. Upon the return of such warrant as provided in the preceding section, the magistrate or judge shall fix a time, not less than ten days nor more than thirty days thereafter, for hearing said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof, was used in violation of any of the provisions of this Act. At such hearing any party claiming an interest in any such property may appear and be heard, and if upon such hearing it shall appear that any property so seized was knowingly used, or permitted to be used, in violation of any provision of this Act, the same shall be adjudged forfeited

to the State, and shall be delivered to the custody of the State 82 perintendent to be disposed of under the provisions of this Act. If upon such hearing it shall appear that any property so seized was not kept or used for an unlawful purpose, or any person shall show that he is the owner of any furniture, fixture or other property seized under such warrant, and that the same or any part thereof were unlawfully used without his knowledge or consent, the same shall be returned to its lawful owner."

That while these defendants, or some of them, were causing the necessary legal process for the seizure of said beer to be issued and before said process was issued and executed, complainant and the said D. M. Blunk, in some manner unknown to these defendants, learned that these defendants, or some of them, had discovered the presence of said beer in said car and were seeking to have the same proceeded against according to the laws of said State of Oklahoma hereinabove set out, and thereupon, they, the complainant herein and the said D. M. Blunk, connived and contrived together for the purpose of placing said beer beyond the reach of any process issued under the laws of said State of Oklahoma, and to that end contrived the idea of issuing said bill of lading referred to in said bill of complaint as bearing date of September 23, 1908, and wherein one L. A. Fleenor, at Gainesville, Texas, was named as consignee; that on the same day, to-wit, the 23rd day of September, 1908, and a short time after said bill of

lading last hereinabove referred to was issued, these defendants, or some of them assisted in executing against said beer a search and seizure warrant issued by a justice of the peace of Oklahoma City Township, Oklahoma County, State of Oklahoma, pursuant to Sections 5 and 6, Article III. of said Senate Bill No. 61 hereinabove set out, which said search and seizure warrant these defendants, or some of them caused to be issued for the reason that said beer was held in storage in said car by the said D. M. Blunk under said verbal agreement with complainant in manner and form
 83 hereinabove stated. And these defendants and each of them further say: That they deny each and every statement and allegation contained in said paragraphs fourteen, fifteen, sixteen and seventeen in said bill of complaint which are inconsistent or in conflict with the statements and allegations contained in this paragraph of defendants' answer.

And these defendants, and each of them, deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this there is not any other matter, cause or thing in said complainant's said bill of complaint contained material or necessary for these defendants to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and aboided or denied, is true, to the knowledge or belief of these defendants, any and each of them, all which matters and things these defendants and each of them are ready and willing to aver, maintain and prove as this Honorable Court shall direct; and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

FRED S. CALDWELL,

Attorney for Defendants.

No. 329. U. S. Circuit Court. M. K. & T. Ry. Co. vs. R. E. Lozier, Fred S. Caldwell, et al. Answer. Filed Dec. 7th, 1908. Harry L. Finley, Clerk.

84 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 329. In Equity.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Complainant,
 vs.

ROBERT E. LOZIER, FRED S. CALDWELL, C. S. WORTMAN, ROY D. Holcomb, C. T. Warden, R. S. Moore, H. C. Berwick, and John Burrows, Defendants.

The Answer of Fred S. Caldwell, one of the Defendants, to the Bill of Complaint of the Missouri, Kansas and Texas Railway Company.

This defendant, now and at all times hereafter saving to himself all and all manner of benefit or exception or otherwise that can

or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, or to so much thereof as this defendant is advised is material or necessary for him to make answer to, answering says:

This defendant admits all the statements and allegations contained in paragraph one of said bill of complaint but specifically denies that, as such common carrier of goods for hire, it is complainant's duty to accept for transportation, from points outside of the State of Oklahoma to points inside of the State of Oklahoma, intoxicating liquors generally and without regard to the purpose

for which said intoxicating liquors are being brought into
85 said State, and the use to which they are to be put by the consignee thereof, as alleged and contended in the first part of paragraph two of said bill of complaint. This defendant further admits that in the six months immediately preceding the filing of said bill of complaint, complainant had tendered to it and accepted large quantities of intoxicating liquors for shipment from points outside of the State of Oklahoma to points inside the State of Oklahoma, from which it received large revenues, to-wit, more than the sum of Two Thousand Dollars per annum exclusive of interest and cost; but, this defendant says that by far the greater portion of such intoxicating liquors so received by complainant and transported into the State of Oklahoma were knowingly received by it and transported into said State of Oklahoma to be there delivered to sundry and divers persons for the sole and express purpose of being used in violation of the laws of said State, to-wit: in violation of the Constitution of said State and in violation of an Act passed by the First Legislature of said State and approved on the 24th day of March, 1908, and known among the Acts of said First Legislature as Senate Bill No. 61.

2. As to paragraph three of said bill of complaint this defendant denies that when intoxicating liquors are tendered to complainant for shipment into said State of Oklahoma it is required by law to issue its bill of lading therefor, whereby it binds itself in manner and form as stated in said paragraph three, except as to such intoxicating liquors as are not intended to be used in violation
86 of the laws of said State upon being transported therein by complainant and there delivered to the consignee.

3. As to paragraph four of said bill of complaint this defendant says: That he has never knowingly or intentionally interfered in any manner with interstate shipments of intoxicating liquors while in the possess- of complainant as an interstate common carrier, and prior to the attaching of the police powers of the State of Oklahoma to and upon the same; and that all acts either done or performed by him or touching any such matters *was* done and performed under due legal process of some court or tribunal of competent jurisdiction of said State of Oklahoma, and in the execution of the police laws and regulations of said State after such intoxicating liquors had become subject to the exercise thereof; and this defendant further denies that he has ever, in any manner or form whatsoever, conspired to interfere with, in any manner, or to any degree what-

ever, the prosecution by complainant of its business as an interstate common carrier.

4. As to paragraph five of complainant's bill of complaint this defendant says: That he has no knowledge concerning the quantities of intoxicating liquors which, in the course of a year, will be tendered to complainant for transportation from points outside the State of Oklahoma to points inside of said State, and which are not intended by the person or persons receiving the same from complainant at the point of destination to be used in violation of the laws of said State, but this defendant specifically denies that complainant is or will be compelled to receive and carry intoxicating liquors of any character or sort, except such as are not intended by the person or persons to whom delivered at the point of destination to be used in violation of the laws of said State; and this defendant expressly denies that he is conspiring, or has at any time conspired, or that he is harassing or interfering with, or that he has ever harassed or interfered with the business of complainant as such interstate common carrier, as alleged and charged in the latter part of said paragraph five of said bill of complaint.

5. As to paragraph six of said bill of complaint this defendant says: That he denies each and every allegation and statement therein contained.

6. As to paragraph seven of said bill of complaint this defendant says: That he denies each and every statement and allegation therein contained.

7. As to paragraph eight of said bill of complaint this defendant says: That he denies each and every statement and allegation therein contained.

8. As to paragraph nine of said bill of complaint this defendant says: That he denies each and every statement and allegation therein contained.

9. As to paragraph ten of said bill of complaint this defendant says: That he denies that he ever has at any time sought or undertaken, either by word or deed, to deprive complainant of, or injure it in, any of its rights guaranteed to it by the Constitution and the laws of the United States.

10. As to paragraph eleven of said bill of complaint this defendant says: That he denies that he is, or ever has been, engaged in any unlawful pursuit, and particularly does he deny that he has ever been engaged in going from point to point in the State of Oklahoma *du* aiding or abetting or assisting or advising or encouraging various and sundry persons to unlawfully interfere with the exercise of the duties and privileges of complainant as a common carrier, by then and there causing said persons to interfere, or attempt to interfere, with the shipment and delivery of intoxicating liquors which are the subject of complainant's interstate business, or by causing and inducing such persons to go into depots and cars of complainant's and then and there seize, or attempt to seize, and confiscate interstate shipments of intoxicating liquors.

11. As to paragraph twelve of said bill of complaint this de-

fendant says: That he denies each and every allegation therein contained.

12. As to paragraph thirteen of said bill of complaint this defendant says: That he denies each and every allegation therein contained.

13. As to paragraphs fourteen, fifteen, sixteen and seventeen of said bill of complaint this defendant says: That he knows little or nothing respecting the deeds, dealings and transactions stated therein, but he has seen a copy of the answer proposed to be put into said paragraphs of said complaint by the other defendants herein, and has no doubt but that the statements contained in such answer of said other defendants are correct. However, for his greater certainty, and in order to avoid expenses and prolixity, this defendant craves leave to refer to that portion of said other defendants' answer pertaining to said paragraphs fourteen, fifteen, sixteen and seventeen of complainant's said bill.

89 And this defendant denies all and all manner of combination and confederacy wherewith he is by the said bill charged; without this, there is not any other matter, cause or thing in said complainant's said bill of complaint contained material or necessary for this defendant to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true, to the knowledge or belief of this defendant, and which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct; and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

FRED S. CALDWELL,

Defendant and Attorney for Self.

Cross-Complaint.

For cross-complaint and for affirmative relief, your orator, Fred S. Caldwell, shows to the Honorable Judges of the Circuit Court of the United States, in and for the Western District of Oklahoma:

First. That he is a citizen of the State of Oklahoma, and a resident of the Western District in said State; that he is a public officer of said State, viz., Counsel to the Governor; that he comes into court at the suit of the Missouri, Kansas and Texas Railway Company vs. Robert E. Lozier, Fred S. Caldwell, C. S. Wortman, Roy D. Holcomb, C. T. Warden, R. S. Moore, H. C. Berwick and John Burrows.

90 Second. That the said Robert E. Lozier, C. S. Wortman, Roy D. Holcomb, C. T. Warden, R. S. Moore, H. C. Berwick and John Burrows have filed their joint and several answer in said cause in this court.

Third. That an Act of Congress approved on the 16th day of June, 1906, (Chap. 3335 U. S. Stats., 1905-1906. Part I. Page 267) and entitled:

"An Act To enable the people of Oklahoma and of the Indian

Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a Constitution and State government and be admitted into the Union on an equal footing with the original States."

contains among other things the following:

"That the manufacture, sale barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within those parts of said State now known as the Indian Territory and the Osage Indian Reservation and within any other parts of said State which existed as Indian Reservation on the first day of January, nineteen hundred and six, is prohibited for a period of twenty-one years from the date of the admission of said State into the Union, and thereafter until the people of said State shall otherwise provide by amendment of said constitution and proper State Legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale and wine, contrary to the provisions of this section, or who shall, within the above-described portions of said State, advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from other parts of said State into the portions hereinabove described, shall be punished, on conviction thereof, by fine not less than fifty dollars and by imprisonment, not less than thirty days for each offense; Provided, That the legislature may provide by law for one agency under the supervision of said State in each incorporated town of not less than two thousand population in the portions of said State hereinbefore described; and if there be no incorporated town of two thousand population in any county in said portions of said State, such county shall be entitled to have one such agency, for the sale of such liquors for medical purposes; and for the sale, for industrial purposes, of alcohol, which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for

scientific purposes to such scientific institutions, universities, and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum not less than one thousand dollars, conditioned that none of such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the parts of said State hereinabove defined shall constitute prima facie evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the liquor is to be used, and no sale shall be made for medicinal purposes except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a bona fide prescription signed

by a regular practicing physician, which prescription shall not be filled more than once. Each sale shall be duly registered, and the register thereof, together with the affidavits and prescriptions pertaining thereto, shall be open to inspection by any officer or citizen of said State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for treatment of diseases which after his own personal diagnosis he shall deem to require such treatment, shall, upon conviction thereof, be punished for each offense by fine of not less than two hundred dollars or by imprisonment for not less than thirty days, or by both such fines and imprisonment; and any person connected with any such agency who shall be convicted of making any sale or other disposition of liquor contrary to these provisions shall be punished by imprisonment for not less than one year and one day. Upon the admission of said State into the Union these provisions shall be immediately enforceable in the courts of said State."

That the Constitution of the State of Oklahoma (Sec. 499 Bunn's Const. of Okla. contains the following provisions with reference to the subject of intoxicating liquors:

"The manufacture, sale, barter, giving away, or otherwise furnishing, except as hereinafter provided, of intoxicating liquors within this State, or any part thereof, is prohibited for a period of twenty-one years from the date of the admission of this State into the Union, and thereafter until the people of the State shall otherwise provide by amendment of this Constitution and proper State Legislation. Any person, individual or corporate, who shall manufacture, sell, barter, give away, or otherwise furnish any intoxicating liquor of any kind, including beer, ale and wine, contrary to the provisions of this section, or who shall, within this State advertise for sale or solicit the purchase of any such liquors, or who shall ship or in any way convey such liquors from one place within this State to another place therein, except the conveyance of a lawful purchase as herein authorized, shall be punished, on conviction thereof, by fine not less than fifty dollars and by imprisonment not less than thirty days for each offense: Provided, That the Legislature may provide by law for one agency under the supervision of the State in each incorporated town of not less than two thousand population in the State; and if there be no incorporated town of two thousand population in any county in this State, such county shall be entitled to have one such agency, for the sale of such liquors for medicinal purposes; and for the sale, for industrial purposes, of alcohol which shall have been denaturized by some process approved by the United States Commissioner of Internal Revenue; and for the sale of alcohol for scientific purposes to such scientific institutions, universities and colleges as are authorized to procure the same free of tax under the laws of the United States; and for the sale of such liquors to any apothecary who shall have executed an approved bond, in a sum not less than one thousand dollars conditioned that none of

such liquors shall be used or disposed of for any purpose other than in the compounding of prescriptions or other medicines, the sale of which would not subject him to the payment of the special tax required of liquor dealers by the United States, and the payment of such special tax by any person within the State shall constitute prima facie evidence of his intention to violate the provisions of this section. No sale shall be made except upon the sworn statement of the applicant in writing setting forth the purpose for which the liquor is to be used, and no sale shall be made for medicinal purposes, except sales to apothecaries as hereinabove provided unless such statement shall be accompanied by a bona fide prescription signed by a regular practicing physician, which prescription shall not be filled more than once, each sale shall be duly registered, and the register thereof, together with the affidavits and prescription pertaining thereto, shall be open to inspection by any officer or citizen of the State at all times during business hours. Any person who shall knowingly make a false affidavit for the purpose of aforesaid shall be deemed guilty of perjury. Any physician who shall prescribe any such liquor, except for treatment of disease which after his own personal diagnosis he shall deem to require such treatment, shall, upon conviction thereof, be punished for each offense by fine of not less than two hundred dollars or by imprisonment for not less than thirty days, or by both such fine and imprisonment; and any person connected with any such agency who shall be convicted of making any sale or other disposition of liquor contrary to these provisions shall be punished by imprisonment for not less than one year and one day. Upon the admission of this State into the Union these provisions shall be immediately enforceable in the courts of the State."

That the First Legislature of the State of Oklahoma passed an Act which was approved on the 24th day of March, 1908, and is known among the Acts of said session of said Legislature as Senate Bill No. 61, of which said Act Sections one, two, three, five, six, fourteen, nineteen "A", twenty and twenty-four of Article III. thereof, are in words and figures as follows:

"Sec. 1. It shall be unlawful for any person, individual or corporate, to manufacture, sell, barter, give away, or otherwise furnish except as in this act provided, any spirituous, vinous, fermented or malt liquors, or any imitation thereof, or substitute therefor; or to manufacture, sell, barter, give away, or otherwise furnish any liquors or compounds of any kind or description whatsoever, whether medicated or not, which contain as much as one half of one per centum of alcohol, measured by volume, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States; or to ship or in any way carry such liquors from one place within this state to another place therein, except the conveyance of a lawful purchase as herein authorized, or to solicit the purchase or sale of any such liquors, either in person or by sign, circular, letter, card, price list, advertisement or otherwise,

or to distribute, publish or display any advertisement, sign or notice where any such liquor may be manufactured, bartered, sold, given away, or otherwise furnished, or to have the possession of any such liquors with the intention of violating any of the provisions of this Act. A violation of any provisions of this Section shall be a misdemeanor, and shall be punished by a fine not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) and by imprisonment for not less than thirty days nor more than six months; Provided, however, that the provisions of this Act shall not apply to the manufacture and sale of unfermented cider and wine, made from apples, grapes, berries or other fruit grown in this State, and to the use of wine for sacramental purposes in religious bodies.

94 SEC. 2. The payment of the special tax required of liquor dealers by the United States by any person within this State except local agents appointed as hereinbefore provided, shall constitute prima facie evidence of an intention to violate the provisions of this Act.

SEC. 3. Every person who shall within this State, directly or indirectly, keep or maintain by himself, or by associating or combining with others, any club room or other place in which any liquor, the sale of which is prohibited by this Act, is received or kept for the purpose of selling, bartering, giving away, or otherwise furnishing, or for distribution or division among the members of any club or association, by any means whatsoever, and every person who shall sell, barter, give away, or otherwise furnish, distribute or divide any such liquors so received or kept shall be guilty of a misdemeanor.

SEC. 5. If it shall be made to appear to any judge of the District or County Court or justice of peace that there is probable cause to believe that liquors are being manufactured, sold, bartered, given away, or otherwise furnished, or are being kept for the purpose of selling, bartering, giving away or otherwise furnishing liquors in violation of this Act, such judge or magistrate shall issue a warrant directed to any officer of the county whom the complainant may designate, having the power to serve criminal process, commanding him to search the premises described and designate in such complaint and warrant and to seize all such liquors there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away, or otherwise furnishing of such liquors, and safely keep the same and to make return within three days of said warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession the same was found, if any, and if no person be found in the possession of said property, his return shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such liquors, furniture or fixtures so seized, and if no person be found in possession thereof a copy of said warrant shall be posted on the door of the building or room wherein the same are found.

SEC. 6. Upon the return of such warrant as provided in the next preceding section, the magistrate or judge shall fix a time, not less

than ten days nor more than thirty days thereafter, for hearing of said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof was used in violation of any of the provisions of this Act. At such hearing any party

95 claiming an interest in any such property may appear and be heard, and if upon such hearing it shall appear that any property so seized was knowingly used, or permitted to be used, in violation of any provisions of this Act, the same shall be adjudged forfeited to the State, and shall be delivered to the custody of the Superintendent to be disposed of under the provisions of this Act. If upon such hearing it shall appear that any property so seized was not kept or used for an unlawful purpose, or if any person shall show that he is the owner of any furniture, fixture or other property seized under such warrant, and that the same or any part thereof were unlawfully used without his knowledge or consent, the same shall be returned to its lawful owner.

SEC. 14. All places where liquors of any kind are manufactured, sold, bartered, given away or otherwise furnished in violation of any of the provisions of this Act, are hereby declared to be public nuisances and shall be abated in the manner provided by law at the suit of any citizen of the State.

SEC. 19A. Any officer, agent or employee of the railroad company, express company, or other common carrier, who shall knowingly carry or deliver any liquors, the sale of which is prohibited by this Act, to or for any person to be sold, bartered, given away or otherwise furnished in violation of this Act, shall be guilty of a misdemeanor. Any such officer, agent or employee who shall knowingly deliver any such liquors to any person other than the person to whom it is consigned and without a written order in each instance of the consignee thereof shall be guilty of a misdemeanor.

SEC. 20. It shall be unlawful for any railroad, or other common carrier, or agent thereof, or any other person, individual or corporate to ship, receive, transport, carry, handle or deliver any liquors the sale of which is prohibited by this Act under a false or fictitious name or title, and any person who shall knowingly violate any provisions of this section shall be deemed guilty of a misdemeanor and all liquors shipped under any such fictitious name or title, or to a fictitious person, shall be forfeited to the State.

SEC. 24. The Governor shall have power to appoint an attorney who shall have been a resident in this state for at least two years, and shall have been a lawyer licensed by some court of record for at least five years, who shall be known as Counsel to the Governor. He shall, under the directions of the Governor, assist in enforcing the provisions of this Act, and the other laws of the State, and shall perform such other duties as the Governor may, from time to time, require. He shall have all the power of county attorneys in their respective counties. He shall hold office during the pleasure of the

96 Governor, and shall give a bond, to be approved by him, conditioned for the faithful discharge of his duties, in the sum of Three Thousand Dollars (\$3,000) and shall receive a salary, to be fixed by the Governor of not more than Twenty-five

Hundred Dollars (\$2,500) per annum, payable monthly; Provided, that in lieu of, or in addition to, appointing such attorney, the Governor may call upon the Attorney General or his assistant to perform such service.

Fourth. That on the 15th day of June, 1908, your orator was duly appointed and commissioned by Charles N. Haskell, as Governor of the State of Oklahoma to the office of Counsel to the Governor, as provided by said Section 24, Article III. of said statute of the State of Oklahoma hereinabove set forth; and thereupon your orator duly qualified for said office and entered upon the discharge of the duties thereof and ever since has been such duly constituted, qualified and acting Counsel to the Governor under the terms and provisions of said Act.

Fifth. That, as appears from "Record Ten" in the office of the United States Internal Revenue Collector for the district of Kansas, at Leavenworth, in the State of Kansas, of which said district the State of Oklahoma is a part, a great many persons within the State of Oklahoma have paid the special tax required of liquor dealers by the United States, all of which, together with the names of said persons and their places of residence is more fully made to appear by "Schedule A" hereto attached and hereby referred to and made a part of this cross complaint as fully and to the same extent as though fully set out herein.

Sixth. That intoxicating liquors which are possessed or in any manner held or kept within the State of Oklahoma for the
97 purpose of, or with the intention on the part of the person so possessing, holding or keeping the same, to use or in any manner dispose of the same or any part thereof in violation of the laws of said State hereinabove set forth, constitute and are a public nuisance, the abatement of which is one of the official duties specifically imposed upon and enjoined of your orator.

Seventh. That the great bulk of complainant's said interstate business in the transportation of intoxicating liquors consists in the transportation of such liquors by complainant from points outside of the State of Oklahoma to points inside said State to be there delivered to and placed in the possession of persons such as those named in "Schedule A" hereto attached, whose sole and only purpose it is to use and dispose of the same in violation of the laws of said State hereinabove set forth, including said Act of Congress commonly known and designated the "Enabling Act." Wherefore, your orator says that by the performance of the last act in each of said interstate commerce transactions, viz., the delivery to the consignee whereby complainant places said intoxicating liquors in the possession of said consignee, complainant thereby creates a public nuisance in said State, and makes a criminal of said consignee.

Eight. That while it is the duty of your orator as such officer of the State of Oklahoma, as hereinabove set forth, to abate and prevent the creation of such liquor nuisances as those created by complainant in manner and form hereinabove set forth, yet your orator is powerless to do so and is wholly without any adequate remedy

98 or any remedy at all at law in the premises, for the reason that complainant, as it seeks to do by this suit, shelters itself from the laws of the State of Oklahoma under the provisions of the Constitution of the United States commonly called the "commerce clause," by virtue of which the police powers of the State of Oklahoma do not attach, or operate upon said intoxicating liquors so transported from points outside to points inside said State and there delivered to the consignee, until after said delivery to said consignee, which is not until said liquor nuisances here complained of are created and the mischief accomplished. Wherefore, your orator says that complainant's acts in so creating said liquor nuisances in said State result in great and irreparable injury to your orator, against which your orator is without any remedy at all at law, and all of which result to your orator's great and irreparable injury and loss in his said office of Counsel to the Governor, in that he is thereby prevented from successfully accomplishing the abolishment of said liquor nuisances in said State.

Ninth. That because of the quantities contained therein and the frequency with which they are made to the same person or persons and from other facts and circumstances, such as payment by the consignee of the special tax required of liquor dealers by the United States, complainant well knows, or by a reasonable exercise of ordinary intelligence and common sense, could easily ascertain, what shipments of intoxicating liquors tendered to it for transportation from points outside the State of Oklahoma to points inside said State, are intended by the consignees thereof to be used or disposed of in violation of the laws of said State, and thereby constitute and become public nuisances immediately upon their
99 delivery by complainant to such consignee.

Tenth. Wherefore, your orator, to the end that he may obtain relief, to which he is justly entitled in the premises, prays the Court to grant to him your writ of subpoena directed to the said Missouri, Kansas and Texas Railway Company requiring and commanding it to appear herein and answer, not under oath, answer under oath being hereby expressly waived, the several allegations in this Cross-Bill contained.

Eleventh. That your Honors grant unto your orator your writ of injunction commanding said Missouri, Kansas and Texas Railway Company, its servants, agents, employees and workmen and all persons claiming to act under its authority, direction or control, to absolutely desist and refrain from receiving for shipment to, and delivery at any point or place within the State of Oklahoma, and from transporting, or in any manner conveying from points outside to a point inside said State of Oklahoma any intoxicating liquor of any kind, including beer, ale and wine and any liquors or compounds of any kind or description whatsoever, whether medicated or not, which contain as much as one-half of one per centum of alcohol, measured by volume, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacists, the sale of which would not subject him to the payment of the special tax required by the laws of the United States, which

said liquors or compounds are consigned to, or to the order of, any person within said State of Oklahoma who has paid the special tax required of liquor dealers by the United States, or, which said liquors or compounds are shipped with instructions to notify any person who has paid the special tax required of liquor dealers by the United States of their arrival at the point of destination, or, which said liquors or compounds are intended by the person, or persons receiving the same from the said Missouri, Kansas and Texas Railway Company at the point of destination within said State of Oklahoma, to be used or in any manner disposed of in violation of the laws of said State, and from receiving for shipment or transportation, or in any manner conveying such liquors or compounds to any point within the State of Oklahoma in such quantities or under such circumstances as render it improbable that the same are intended for the individual consumption of the consignee or person receiving delivery of the same from said Missouri, Kansas and Texas Railway Company, and, from permitting any such liquors or compounds which have been by it transported or conveyed to a place within the State of Oklahoma, to be and remain within any of its cars, sheds or depots or upon its premises, after the consignee or person to whom delivery is to be made, has had reasonable opportunity to remove the same therefrom, and from issuing its bill, or bills of lading covering shipments of such liquors or compounds, and in which the name of the actual consignee does not appear, and from issuing more than one bill of lading for any shipment of such liquors or compounds, which are to go forward on the same way-bill and are intended for the same consignee.

bill and are intended for the same consignee.

101 Twelfth. Your orator further prays for such other and further relief, both preliminary and final, as to your Honors and this Honorable Court may seem equitable and proper in the premises, and for all costs of this suit.

FRED S. CALDWELL,
Attorney for Self.

Verification.

STATE OF OKLAHOMA,
Western District, Logan County, ss:

Fred S. Caldwell, of lawful age, being first duly sworn, on oath says:

That he is the relator in the foregoing cross-complaint, which said cross-complaint he has carefully read; that he knows the statements and allegations contained in said cross-complaint and verily believes the same to be true and correct.

FRED S. CALDWELL.

Subscribed and sworn to before me this 7th day of December, 1908.

[SEAL.]

HARRY L. FINLEY,
Clerk U. S. Circuit Court.

02-121 (Schedule omitted herefrom).

Endorsed: No. 329. U. S. Circuit Court, Western District. M. K. & T. Ry. Co. vs. R. E. Lozier, Fred S. Caldwell, et al. Answer and Cross-Complaint. Filed Dec. 7th, 1908. Harry L. Finley, Clerk.

22 In the United States Circuit Court Within and for the Western District of Oklahoma.

No. 329. Equity.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.

ROBERT E. LOZIER, FRED S. CALDWELL, C. S. WORTMAN, ROY D. Holcomb, C. T. Warden, R. S. Moore, H. C. Berwick, and John Burrows, Defendants.

Demurrer to Answer and Cross-complaint of Defendant Fred S. Caldwell.

Comes now the Missouri, Kansas & Texas Railway Company, and demurs to paragraphs one, two, three, four and thirteen of the answer of defendant Fred S. Caldwell herein, and for grounds of demurrer states that said paragraphs and each of them are insufficient, and do not set up a valid defense to the paragraphs of complainant's bill of complaint to which they refer.

And complainant demurs to that part of said defendant's answer designated as "Cross-Complaint", and to each and every paragraph hereof, and for grounds of demurrer states that said cross-complaint states no fact which would entitle the said defendant to invoke the equity jurisdiction of this Court.

CLIFFORD L. JACKSON AND
DU MARS & VAUGHT,
Attorneys for Complainant.

23 STATE OF OKLAHOMA,
Oklahoma County, ss:

John E. Du Mars, being first duly sworn, on his oath says that he is one of the attorneys for the complainant, which is a corporation organized under the laws of the State of Kansas, and that in his judgment the foregoing demurrer is well taken in point of law, and on behalf of complainant affiant says that said demurrer is not interposed for delay.

JOHN E. DU MARS.

Subscribed and sworn to before me this 5th day of March, 1909.
My Commission will expire Aug. 7th, 1912.

Notary Public.

No. 329. Equity. In the United States Circuit Court within and for the Western District of Oklahoma. Missouri, Kansas & Texas Railway Company, Complainant, vs. Robert E. Lozier, et al., Defendants. Demurrer to answer and cross complaint of defendant Fred S. Caldwell. Filed March 15th, 1909. Harry L. Finely Clerk, By Guy R. Gillett, Deputy.

124 In the Circuit Court of the United States Sitting Within and for the Western District of the State of Oklahoma.

JOSEPH FILLER, Plaintiff,

vs.

S. W. STONE, B. J. WAUGH, MURDOCK, FENTON, CAIN (whose First Names are Unknown to Plaintiff), J. M. Hayes, William Zwick Edward Dewes Oldfield and J. J. Bell, Defendants.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States for the Western District of the State of Oklahoma:

Your complainant respectfully shows to the Court that he is a citizen and inhabitant of the State of Missouri, residing at the City of St. Louis, in the State of Missouri; that he brings this, his bill of complainant against S. W. Stone, one of the defendants herein who is and was at all times hereinafter mentioned, the Acting Superintendent of the State Agency of Oklahoma, pursuant to an Act of the Legislature of the State of Oklahoma, as will more fully appear from the Session Laws of the said State of Oklahoma, of 1907-8, and his successors in office as such Superintendent of said State Agency, B. J. Waugh, Murdock, Fenton and Cain, (whose given names are unknown to this complainant), and who, as this complainant is informed and believes, have been appointed and designated by the said S. W. Stone to enforce said Act of the Legislature of Oklahoma, heretofore referred to, and J. M. Hayes, as Counsel to the Governor of the State of Oklahoma, and William Zwick Edward Dewes Oldfield and J. J. Bell, as Justices of the Peace, in and for Oklahoma City Township, County and State of Oklahoma

and all public officers and private citizens, who shall engage
125 in an assault upon and for the destruction of complainant's right of property and commerce between states, as herein after set forth. This bill to be added hereto by amendments from time to time as causes shall arise, and therefore your complainant say:-

1st. That he is a dealer in intoxicating liquors, and has his principal office and place of business in the City of St. Louis, State of Missouri, and that he has built up and now enjoys a lucrative business in the sale of such liquors, consisting in a large part of sales thereof to customers residing outside of the State of Missouri including customers in the State of Oklahoma.

2nd. That his principal method of making shipments in the

various places, including the State of Oklahoma, is by what is known as "shippers' orders", "order notify", and "sight draft", and "bill of lading" method, that the details of the transactions of this character he makes into the State of Oklahoma, *is* as follows:

Complainant has the use of the United States mail, sending out advertising matter and circulars, and receiving from citizens of Oklahoma, orders for intoxicating liquors owned and controlled by complainant in the City of St. Louis, Missouri, to be sent to them by freight, the price to be paid after the arrival of the goods, in the manner and form as hereinafter set out.

The bill of lading of said shipment is sent to a bank or some responsible person at the home or place of resident- of the consignee. Attached to said bill of lading is a sight draft for the purchase price. When the draft is paid, the bill of lading is turned over to the consumer, who presents the same to the railroad company and receives the shipment. The method, as above states, is known to the railroad and public generally by the various terms of "shippers' orders", "orders notify", and "sight draft" and "bill of lading" method.

On each box or package that is sent out is marked *with* 126 either the full name or initials of the customer or consignee, and the bill of lading contains the full name or initials of the customer, or consignee, blank copy of the bill of lading used by complainant in making these shipments is hereto attached, marked Exhibit "A" and made a part of this bill of complaint.

3rd. Complainant further shows to your Honor that all orders received and accepted, and billed by him as above stated, for shipment into the State of Oklahoma, and all shipments so sent into the said State, are genuine bona fide orders and shipments, and are made only on bona fide orders, and complainant does not, -or would he at any time, ship said intoxicating liquors to any point in the State of Oklahoma without first having received a bona fide order for same, or at all events, an order believed to be bona fide, made in good faith by parties to whom the shipments are made.

4th. Complainant further says that he does not make shipments of said intoxicating liquors into the State of Oklahoma for the purpose of there having it kept to be sold, in violation of the law, for himself or by any agent of the complainant, but that all shipments are made upon bona fide orders, as herein set forth.

5th. Complainant further says that in the event the consignee does not pay the draft sent to the bank and take up the bill of lading for his shipment, the goods, as directed by the bill of lading, are ordered returned to St. Louis. All bills of lading contains instructions to return in ten days if not delivered.

6th. Complainant further shows that his business, conducted as aforesaid, is by him confined exclusively to the sales made in the State of Missouri, and further for carrying on commerce between the State of Missouri, and other States, and as to matters involved in this bill, the State of Oklahoma and such commerce is protected by the Interstate Commerce Clause of the Constitution of the United

States, to-wit: That contracts by orders, acceptance, shipments, made as aforesaid by the complainant to his customers residing in Oklahoma, are made in and pursuant to the principal and freedom of commerce between the States and of the right of a citizen of one State to contract to send merchandise into another State from which order for same should come.

127 7th. Complainant further states that the defendant, S. W. Stone, as Superintendent of the State Agency of the State, for the sale of intoxicating liquors for said State of Oklahoma, is by law the receiver of all liquors seized by local officers for the State, and further that he has assumed the power, (whether or not he has such power this complainant is not sufficiently advised,) to appoint certain persons known as State Enforcement Officers, purporting to act under an Act of the Legislature, commonly known as the Prohibition Law, or Billups Bill, of the State of Oklahoma. That pursuant to his assumed authority, he has appointed as this complainant is informed and believes, one B. J. Waugh, and one Murdock, and one Cain, and one Fenton, whose first names are unknown to this complainant, as such State Enforcement Officers.

8th. Complainant further alleges that on or about the 20th day of October, A. D. 1909, the said Enforcement Officers procured a search and seizure warrant, as this complainant is informed and verily believes, from the defendant, J. J. Bell, Justice of the Peace, and caused him to issue said warrant, directing the seizure of 120 packages of intoxicating liquor, shipped into the State of Oklahoma, to consumers of this complainant under the terms and conditions of shipment, as heretofore set out in this bill of complaint.

9th. Complainant further says that the draft or bill of lading for said shipment had not been delivered to the consignee, and that said intoxicating liquors were at the time of said seizure, an interstate shipment, still in the hands of, and under the control of the Carrier.

128 10th. Complainant further alleges that the value of said intoxicating liquors so seized is \$1264. Twelve Hundred and Sixty-Four Dollars.

11th. Complainant further alleges that he is informed and believes that the same method has been used by the said defendants to seize other shipments of intoxicating liquors made from other parties, which were also interstate shipments, and were so seized by said parties, or caused to be seized by them while in the hands of the Carrier, and this complainant is informed, and believes, that said officers have stated that they would continue to make such seizures, regardless of the fact that said liquors are inter-state shipments.

12th. Complainant further says that under and by virtue of the Act of the Legislature of Oklahoma, heretofore referred to, he is informed and believes that the Governor of said State of Oklahoma has appointed as Counsel to the Governor, one J. M. Hayes, as Attorney to enforce the provisions of said Act, and complainant is informed and believes that the Enforcement Officers, so as aforesaid set out, and their acts in seizing said intoxicating liquors and pro-

curing search and seizure warrants from the magistrates, knowing at the time that the liquors are interstate shipments and in the hands of the carrier, are being done under the direction of said Enforcement Attorney.

Complainant further shows that if this method by the officers so as aforesaid alleged is allowed to continue, his business will be seriously injured by reason of the delays of delivery, due to the seizure so as aforesaid made by said officers.

13th. Complainant further alleges that he is informed and believes that it has been the custom of said officers, to apply to the defendants, Wm. Zwick, Edward Dewes Oldfield, and J. J. Bell, as

129 Justices of the Peace, for a John Doe warrant, for the seizure of intoxicating liquors, as is herein set out, from the different railroads in the City of Oklahoma City, County and State of Oklahoma, and that it has been the custom of said Justices to the Peace, to issue said warrants, and permit either constables serving under them, or said enforcement officers, to seize and take possession of said intoxicating liquors.

14th. Complainant further shows that the defendants and each of them, are threatening to continue, and will continue the method of seizure of said intoxicating liquors, as herein set out, unless restrained by an order of this Honorable Court, and will continue to advise, instruct, direct, aid and abet in making, and will make seizure of said liquors while in the hands of the carriers, shipped by the complainant into the State of Oklahoma by the "shipper's orders," "orders notify," or "sight draft" and "bill of lading" method, as above described, and will continue advising and making seizures of such liquors when in the opinion of the officers or said defendants, such liquors so shipped are not intended for the personal use of the consignee, or, in their opinion, the consignee expects to sell same.

15th. Complainant further shows that he has now, including the shipment so as aforesaid set out, bona fide orders from his customers in this district, involving a sum in excess of the value of Five Thousand (\$5,000.00) Dollars, and that he has constantly in transit in this district, intoxicating liquors from the City of St. Louis, State of Missouri, of the value in excess of the sum of Five Thousand (\$5,000.00) Dollars, and that his business in Oklahoma will be totally destroyed unless it is protected by an order of this Court.

16th. Complainant further shows that unless the said defendants and each of them, is restrained by an order of this Court, herein-
130 after more fully prayed for, an irreparable injury will be inflicted upon the business of this complainant in carrying on interstate commerce under the protection of the United States Constitution, as shown above, and for an action at law no adequate relief can be obtained, and an attempted resort to an action at law will result in a multiplicity of suits and vexatious and expensive litigation.

17th. Complainant further says that he is informed and believes that the Enforcement Officers, so as aforesaid names has in the past where one Justice of the Peace decided that the liquors so

seized from the railroad company, under similar orders and shipments by other parties as made by this complainant, were not subject to seizure and were ordered returned to the carrier, went before another Justice of the Peace, and there secured another warrant for the seizure of the same liquors, and this complainant verily believes that the same method will be used against this complainant in the event he should secure an order from the Justice of the Peace who issued the search warrant and seizure warrant, for the liquors hereinbefore set out, and by reason thereof, complainant has no action at law, or adequate relief without it resulting in a multiplicity of suits and vexatious and expensive litigation.

Complainant therefore prays the Court that the defendant S. W. Stone, or his successor in office, be ordered and perpetually enjoined from appointing any person or persons to seize or cause to be seized any liquors of this complainant, shipped in accordance with the facts and bill of lading, to his customers in Oklahoma, as in this bill of complaint set out, and further that the defendants, B. J. Waugh, and one Murdock, Cain and Fenton, whose given names are unknown to the complainant, from seizing or causing to be seized, either directly or indirectly, any of said liquors, shipped to the customers of this complainant, in the Western District 131 of the State of Oklahoma, as herein set out, and that the defendant J. M. Hayes, be ordered and perpetually enjoined from seizing or causing to be seized, either directly or indirectly, any intoxicating liquors shipped by this complainant to his customers, in the Western District of the State of Oklahoma, as in this bill of complaint set forth, and further that the defendants William Swick, Edward Dewes Oldfield and J. J. Bell, be ordered and perpetually enjoined from issuing a search warrant or causing the same to be issued for the seizure of any intoxicating liquors of this complainant shipped by him from the State of Missouri, to his customers residing in the Western District of the State of Oklahoma, under the terms and conditions as in this bill of complaint set forth.

Complainant further prays that the order shall be binding upon the defendants, their successors in office, and all persons or private citizens when they have received knowledge thereof, and the complainant further prays leave to supplement these proceedings from time to time, bringing persons who shall unlawfully seize goods consigned by complainant to his customers, as in this bill of complaint set forth, to answer to this Court why said seizure was made and why they should not be held for contempt, or otherwise punished in the sound discretion of this Court, if they should hold the same after knowledge thereof, and complainant further prays that your Honor order a writ of subpoena, directed to each of the defendants, commanding them under a certain date and under a certain penalty to be and personally appear before your Honor, in this Honorable Court, and then and there a full, true and perfect answer make for all and singular in the premises, and further perform and abide such further orders, directions and decrees therein, as to your Honor shall seem just and proper.

E. G. McADAMS,
Complainant's Att'y.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
ORDER BILL OF LADING—ORIGINAL.

Shippers No. _____
Agents No. _____

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading.

19

at _____

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER Bill of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless permission is inclosed on this original bill of lading or given in writing by the Shipper.

The Rate of Freight from _____

to _____ is in Cents per 100 Lbs.

										IF Special
										per
IF 1st Class	IF 2d Class	IF 3d Class	IF 4th Class	IF 5th Class	IF Class A	IF Class B	IF Class C	IF Class D	IF Class E	

(Mail Address—Not for purposes of Delivery)

Consigned to ORDER OF _____

Destination _____

Notify _____

At _____

Route _____

State of _____

County of _____

State of _____

County of _____

Car Initial _____

Car No. _____

ENDORSEMENTS

[illegible][illegible]

Sec. 4. All property shall be carried at the point of delivery or at the point of origin within four months after delivery of the property, or, in the event of failure to make delivery, within four months after a reasonable effort for delivery has elapsed. And claims are so made the carrier shall not be liable.

Sec. 5. The carrier shall be liable for damages to any of the property shipped on account of said property, so far as this shall not be effected upon or by any insurance that may have been effected upon or by the policy or policies of insurance.

Sec. 6. All property shall not

at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring

day-voyagers (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in a depot, or place of delivery and to the carrier, or warehouse, subject to a reasonable charge for storage and to the carrier's responsibility as warehouseman. The carrier has the option of either removing the cargo to a public or private warehouse at the cost of the owner and there held at the owner's risk, or without liability on the part of the carrier, and subject to a lien for freight and other lawful claims including a reasonable charge for storage. The carrier may also remove the cargo to a public or private warehouse or car, or for the use of a railroad, after the car has been held forty-eight hours (exclusive of legal holidays) for loading or unloading, and without such charge to all other charges, including a reasonable charge for demurrage and to a lien therefor. Nothing in this section shall be construed as affecting the time allowed by law or as selling under any local rule affecting car storage or storage.

which there is no regularly appointed agent shall be entirely at risk of owner after unloading from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves or landings shall be at owner's risk until they are loaded on to and after that time shall be at the risk of the carrier.

[illegible]

Sec. 9. Except in case of actual loss, the owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the cost of storage and demurrage before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

[illegible]

Sec. 10. Any alteration, addition or erasure in this bill of lading which shall be made without the endorsement thereof herein, signed by the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

132 UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

On this 21st day of October, A. D. 1909, personally appeared before me the undersigned Joseph Filler, who being by me duly sworn on oath says: That he is familiar with the matters and things stated in the foregoing complaint, and that the facts therein stated are true to the best of his knowledge, information and belief.

JOSEPH FILLER.

Sworn and subscribed to before me this 21st day of October, A. D. 1909.

[SEAL.]

HARRY L. FINLEY,
*Clerk U. S. Circuit Court,
Western Dist. of Oklahoma.*

(Here follows bill of lading, Exhibit A, marked page 132.)

133 Endorsed: #484. Joseph Filler vs. S. W. Stone, et al.
Bill of Complaint. Filed Oct. 21, 1909. Harry L. Finley,
Clerk.

134 In the Circuit Court of the United States for the Western
District of Oklahoma.

JOSEPH FILLER, Complainant,

vs.

S. W. STONE, B. J. WAUGH, MURDOCK, FENTON, CAIN (Whose First
Names are Unknown to Complainant) and J. M. Hayes, William
Zwick, Edward Dewes Oldfield and J. J. Bell, Defendants.

Petition for Injunction and Restraining Order.

Now comes Complainant Joseph Filler, by his solicitor, E. G. McAdams, Esq., and respectfully presents his amended Petition for Temporary Injunction and Temporary Restraining order herein, and for grounds for said petition, for a temporary Restraining Order and Temporary Injunction, he here alleges and makes as a part of this his Amended Petition, his Original Bill of Complaint, this day filed in this court, and here pleads the same allegations as alleged in said original Bill of Complaint as though the same were specifically set out herein.

Wherefore, Complainant respectfully prays that a Temporary Injunction, by this Honorable Court, enjoining the defendants, S. W. Stone, B. J. Waugh, Murdock, Fenton, Cain and J. M. Hayes, and each of them, their successors in office, their agents, employees and attorneys from either directly or indirectly seizing or causing to be seized, any intoxicating liquors shipped by the plaintiff, Joseph Filler, from the State of Missouri, to his customers within the Western

135 District of the State of Oklahoma, while in the possession of
the carrier, and before the same has been delivered to the consignee, all as alleged and set out in the Original Bill of Complaint, and that the hearing of said Temporary Injunction be set down by this Honorable Court, and that upon final hearing, said Temporary Injunction be made permanent.

Complainant further prays and shows to the Court, that unless a Temporary Restraining order is issued by this court, restraining said defendants and each of them, from seizing said liquors, that he will suffer irreparable injury.

He therefore prays this Honorable Court for a Temporary Restraining order herein, forthwith restraining the defendants, and each of them, from either directly or indirectly, seize- or cause- to be seized any intoxicating liquor, shipped by the complainant, Joseph Filler, from the State of Missouri, to his customers within the Western District of the State of Oklahoma, while in possession of the carrier and before the same has been delivered to the consignee as alleged and set out in his Original Bill of Complaint, and that a certified copy of said order be served upon the defendants, and each

of them, by the Marshal of this Court, and that a precept or writ of execution in Chancery with such copy of the order attached, be issued by the Clerk of this court, directed to the Marshal, commanding him to serve the same upon said defendants, and that the Complainant have the relief prayed for in his Bill of Complaint, and he will ever pray.

E. G. McADAMS,
Attorney for Complainant.

136 UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

Joseph Filler, being first duly sworn, on oath, doth depose and say, that he is the Complainant above named, that he has read the foregoing Petition and knows the contents thereof, and that the allegations in the same are true as to his knowledge and belief.

JOSEPH FILLER.

Subscribed and sworn to before me this 21st day of October, 1909.

[SEAL.]

HARRY L. FINLEY,

Clerk U. S. Circuit Court.

Endorsed: No. 484. In the Circuit Court of the United States for the Western District of Oklahoma. Joseph Filler, Plaintiff vs. S. W. Stone, et al. Petition for Injunction and Restraining Order. Filed Oct. 21, 1909. Harry L. Finley, Clerk.

137 In the Circuit Court of the United States for the Western District of Oklahoma.

JOSEPH FILLER, Plaintiff,

vs.

S. W. STONE et al., Defendants.

Restraining Order.

This cause coming on to be heard on this the 21st day of October, A. D. 1909, upon the complaint of the plaintiff, and the Court, after being fully advised in the premises, is of the opinion that a temporary restraining order should issue.

It is therefore ordered that the defendants, S. W. Stone, B. J. Waugh, — Murdock, — Fenton, — Cain, and J. M. Hayes, and each of them, and all persons acting by, through or under them, be and they are hereby restrained from seizing or causing to be seized, either directly or indirectly, any intoxicating liquors shipped by the complainant, Joseph Filler, from the State of Missouri to consignees within the Western District of the State of Oklahoma, while in the possession of the common carrier and before the same have been delivered to such consignees.

It is further ordered that the defendants, and each of them, be served with a notice of this order to be and appear before the Court

at the Federal Court Room in Guthrie, Oklahoma, on Tuesday, the 26th day of October, A. D. 1909, at 10:00 o'clock a. m. and to there and there show cause why a temporary injunction should not be issued, as prayed for in the complainant's bill.

It is further ordered that the restraining order herein granted shall be in force and effect until the time fixed for the hearing of said application for a temporary injunction, and until a further order of the court.

It is further ordered that a copy of this order, certified under the hand of the Clerk and seal of the Court, be served on defendants and each of them, by the Marshal of the Western District of Oklahoma.

138 This order to become effective upon the complainant, Joseph Filler, executing and filing, a good and sufficient bond in the sum of One Thousand (\$1,000.00) dollars, to be approved by the Clerk of this Court, indemnifying the defendants herein against any damage they may sustain thereby in the event it shall be determined that this Restraining Order should not have been issued.

JOHN H. COTTERAL, *Judge.*

Endorsed: No. 484. Joseph Filler c'mpl't vs. S. W. Stone et al. Def'ts. Restraining Order. Filed Oct. 21, 1909. Harry L. Finley, Clerk.

139 In the Circuit Court of the United States Sitting Within and for the Western District of the State of Oklahoma.

JOSEPH FILLER, Complainant,
vs.

S. W. STONE et al., Defendants.

Motion to Amend Bill of Complaint by Making H. D. Garrison and Others Defendants Therein.

Comes Joseph Filler complainant, by his solicitor, E. G. McAdams, and respectfully shows to the Court that H. D. Garrison is duly qualified and acting Sheriff of Oklahoma County, State of Oklahoma, and that W. J. Garrett, G. F. Caffey and John Queenan are Constables in and for Oklahoma City Township in said County and State, and your complainant further shows that search warrants procured by the enforcement officers of the state are directed to the Sheriff, Constables, Marshals and policemen in said County and that said enforcement officers have been procuring John Doe warrants for the seizure of liquors of complainant herein and that they have there either directed to the Sheriff or some one of said constables. It is therefore necessary that H. D. Garrison, W. J. Garrett, G. F. Caffey and John Queenan be made party- defendant to this suit, and your complainant, by his solicitor, moves the court to grant an order per

mitting him to file an amended bill of complaint making said parties defendants.

E. G. McADAMS,
Solicitor for Complainant.

Endorsed: No. 484. Joseph Filler vs. S. W. Stone, et al. Motion to amend Bill of Complaint. Filed Oct. 23, 1909, Harry L. Finley, Clerk.

140 In the Circuit Court of the United States Sitting Within and for the Western District of the State of Oklahoma.

JOSEPH FILLER, Complainant,
vs.
S. W. STONE et al., Defendants.

Order.

The Complainant in this cause having, by his solicitor, E. G. McAdams, this day presented his motion to this court for an Order permitting him to file an amended bill of complaint by making W. J. Garrett, G. F. Caffey, John Queenan and H. D. Garrison party-defendants to said cause, and it appearing to the satisfaction of the court that they are necessary parties to said cause of action,

It is ordered that the complainant have, and he is hereby given leave by the court to file his amended bill of complaint and he is further permitted to make H. D. Garrison, W. J. Garrett, C. F. Caffey and John Queenan, party-defendants.

JOHN H. COTTERAL, *Judge.*

Endorsed: No. 484. Joseph Filler vs. S. W. Stone et al. Order. Filed Oct. 23, 1909. Harry L. Finley, Clerk.

141 In the Circuit Court of the United States Sitting Within and for the Western District of the State of Oklahoma.

JOSEPH FILLER, Complainant,
vs.

S. W. STONE, B. J. WAUGH, MURDOCK, FENTEN, CAIN (Whose First Names are Unknown to Complainant), Fred S. Caldwell, J. M. Hayes, William Zwick, Edward Dewes Oldfield, J. J. Bell, H. D. Garrison, W. J. Garrett, G. F. Caffey, John Queenan, Defendants.

Amended Bill of Complaint.

Joseph Filler, complainant in the above entitled cause, leave of Court first had and obtained, brings this his amendment of his original bill of complaint, as follows, to-wit:

And thereupon your orator complains and makes amendments of his said bill of complaint herein as follows:

1st. That he desires to make as defendants to said original cause of action, the defendants Harvey D. Garrison, Sheriff of Oklahoma County, W. J. Garrett, G. F. Caffey and John Queenan, and for reason thereof, alleges and say:-

That the said defendants W. J. Garrett, G. F. Caffey and John Queenan, are constables, serving as such in the City of Oklahoma City, County of Oklahoma, under Wm. Zwick, Edward Dewes Oldfield and J. J. Bell, as Justices of the Peace of said Oklahoma City Township, County and State of Oklahoma; and,

2nd. Your orator further complains that it has been the custom of the defendants, B. J. Waugh, Murdock, Cain and Fenton, (whose first names are unknown to complainant,) and especially of the defendant B. J. Waugh, to file an affidavit before the said Justices of the Peace, asking for a search and seizure warrant for the confiscation of intoxicating liquors, as described and set out

142 in your orator's original bill of complaint filed herein, and procure thereon a search warrant for the search and seizure of such liquors, and your orator hereto attaches a copy of such search warrant issued upon the complaint of B. J. Waugh, one of the defendants herein, and makes it a part of this complaint.

3rd. Your orator further shows that the defendant, H. D. Garrison, is Sheriff of Oklahoma County, State of Oklahoma, and that the defendants have in the past made seizure of such liquors of this complainant as described and set out in his original bill of complaint, under and by virtue of such search warrant, hereto attached, marked Exhibit "A" and made a part hereof, and that the defendants H. D. Garrison, W. J. Garrett, G. F. Caffey and John Queenan, will, as your complainant verily believes, continue the method of seizure of such intoxicating liquors as is set out in your orator's original bill of complaint, unless restrained by an order of this Honorable Court, and will continue to advise, instruct, direct, aid and abet in making, and will make seizure of said liquors while in the hands of the carriers, shipped by the complainant into the State of Oklahoma by the "shipper's order," "Order notify," and "sight draft and bill of lading" method, as described and set out in your orator's original bill of complaint herein, and will continue advising and making seizures of such liquors when in the opinion of the officers or said defendants, such liquors so shipped are not intended for the personal use of the consignee, or in their opinion the consignee expects to sell same.

5th. Your orator, in support of this amended bill of complaint, hereby pleads and makes as a part of this amended bill of complaint, his original bill of complaint, filed in this Court on October 21st, A. D., 1909, and pleads the same herein as though each and every allegation was specifically set out in this amended bill of complaint.

Wherefore, your orator prays, as he has heretofore prayed
143 in his original bill of complaint, that a temporary restraining order of this Court be issued, restraining the defendants H. D. Garrison, W. J. Garrett, G. F. Caffey and John Queenan, and each of them, and all persons acting by, through or under them from seizing or cause- to be seized, either directly or indirectly, any intoxicating

liquors shipped by the complainant, Joseph Filler, from the State of Missouri, to consignees within the Western District of the State of Oklahoma, while in possession of the common carrier, and before the same has been delivered to consignees, and further that a temporary injunction be entered against the said defendants, and each of them, and upon final hearing thereof that the defendants and each of them be permanently enjoined from seizing, or cause- to be seized, either directly or indirectly, any intoxicating liquors shipped by the complainant Joseph Filler from the State of Missouri to consignees within the Western District of the State of Oklahoma, while in the possession of the common carrier and before the same have been delivered to such consignees, and for such other and further decrees of this Court as to your honor shall seem just and proper.

E. G. McADAMS,
Att'y for Defendant.

144 STATE OF OKLAHOMA,
Oklahoma County, ss:

Personally appeared before me, the undersigned authority, Joseph Filler, of lawful age, who being duly sworn upon oath, deposes and says: That he is the complainant in the above foregoing entitled cause, and has read the same, and the allegations therein are true to his own knowledge, except such matters as therein stated are information and belief, and as to such statements, he believes same to be true.

JOSEPH FILLER.

Sworn and subscribed to before me this 23 day of Oct., A. D. 1909.
[SEAL.] LENA STOUT.

145 *Search Warrant.*

In the Name of the State of Oklahoma.

STATE OF OKLAHOMA,
Oklahoma City, ss:

To any sheriff, G. F. Caffey, constable, marshal or policeman in the County of Oklahoma, Greeting:

Proof by affidavit having been made this day before me by B. J. Waugh, showing that on the 20th day of Oct., 1909, John Doe on M. K. T. Freight car 60275 M. K. Railroad yards in and east of Oklahoma City, did, then and there, unlawfully and wilfully have in their possession and under their control, and did then and there keep, and do now have in their possession and under their control, and do now keep for the purpose of selling, bartering, giving away and otherwise furnishing certain intoxicating liquors, described as follows, to-wit: beer, whiskey, wine in cases, bottles, casks and receptacles, and all appliances used in dispensing same, and affiant further says that said defendants as aforesaid, at said place and in said building, are now bartering, selling and giving away intoxi-

eating liquors to-wit: whiskey beer and wine, and other compounds, the same being intoxicating, in violation of law, contrary to the for- of the statutes in such cases made and provided and against the peace and dignity of the State of Oklahoma:

And it appearing that there is probable cause for believing that such grounds are true, you are, therefore, commanded in the day or night time, to make immediate search of the above described prop- erty, and to seize and safely keep and being before the undersigned any and all of the above described property, and to serve a copy of this warrant upon the defendants and each of them, or any persons or persons, in whose possession or under whose control the above de- scribed property may be found, and to arrest the said defendants, and each of them, and if no person be found in the possession of said property — is found and make return of this warrant within three days from the issuance thereof.

Dated this 20th day of October, 1909.

J. J. BEALL,
Justice of the Peace.

STATE OF OKLAHOMA,
Oklahoma County, ss:

Received this writ this — day of —, 19-, and executed the same by arresting said — — and by seizing the following de- scribed property, the same being covered by this warrant, to-wit: — on the — day of — 19-, and by bringing the defendants and said property before the Court as commanded.

— —, *Sheriff,*
— —,
Deputy Sheriff.

Sheriff's Fees.

Executing Search Warrant.....	\$—.	Mileage	\$—.
Arrest.....	\$—.	Commitment.....	\$—.
Attendance.....	\$—.	Drayage	\$—.

Search warrant. The State of Oklahoma vs. — —, Defend- ants. Issued — —, 19-, On complaint filed before — —, Justice of the Peace, in and for Oklahoma City Township, Okla- homa County, State of Oklahoma.

(Endorsed:) No. 484. Joseph Filler, Complainant, vs. S. W. Stone, et al., Amended Bill of Complaint, Filed Oct. 23, 1909. Harry L. Finley, Clerk.

146 In the Circuit Court of the United States for the Western District of Oklahoma.

JOSEPH FILLER, Plaintiff,

vs.

S. W. STONE et al., Defendants.

Restraining Order.

This cause coming on to be heard on this the 23rd day of October, A. D. 1909, upon the complaint of the plaintiff, and the Court, after being fully advised in the premises, is of the opinion that a temporary restraining order should issue.

It is therefore ordered that the defendants, H. D. Garrison, W. J. Garrett, G. F. Caffey and John Queenan, and each of them, and all persons acting by, through or under them, *by* and they are hereby restrained from seizing or causing to be seized, either directly or indirectly, any intoxicating liquors shipped by the complainant, Joseph Filler, from the State of Missouri to consignees within the Western District of the State of Oklahoma, while in the possession of the common carrier and before the same have been delivered to such consignees.

It is further ordered that the defendants, and each of them be served with a notice of this order to be and appear before the Court at the Federal Court Room in Guthrie, Oklahoma, on Tuesday, the 26th day of October, A. D. 1909, at 10:00 o'clock A. M. and to then and there show cause why a temporary injunction should not be issued, as prayed for in the complainant's bill.

It is further ordered that the restraining order herein granted shall be in force and effect until the time fixed for the hearing of said application for a temporary injunction, and until a further order of the Court.

147 It is further ordered that a copy of this order, certified under the hand of the Clerk and seal of the Court, be served on the defendants, and each of them, by the Marshal of the Western District of Oklahoma.

This order to become effective upon the complainant, Joseph Filler, executing and filing a good and sufficient bond in the sum of One Thousand (\$1000) Dollars, to be approved by the Clerk of this Court, indemnifying the defendants restrained herein, against any damage they may sustain thereby in the event it shall be determined that this restraining order should not have been issued.

JOHN H. COTTERAL, Judge.

Endorsed: No. 484. Joseph Filler vs. S. W. Stone, et al. Restraining Order. Filed Oct. 23, 1909. Harry L. Finley, Clerk.

148 In the United States Circuit Court Sitting Within and for the Western District of the State of Oklahoma.

JOSEPH W. FILLER, Complainant,

vs.

S. W. STONE et al., Defendants.

Motion for Order to File Amended Bill of Complaint.

Your complainant, Joseph W. Filler, by his solicitor, of record, E. G. McAdams, moves the court for an order permitting him to file an amended bill of complaint by inserting before the name "Fenton" the initials S. W., so as to make S. W. Fenton a party defendant in said original bill of complaint, and before the name "Murdock," the word William, so as to make William Murdock one of the defendants in the original bill of complaint, and before the name "Cain" the initials F. F., so as to make F. F. Cain one of the party defendants in the original bill of complaint.

And your complainant here states that S. W. Fenton, William Murdock, and F. F. Cain are the identical persons set out in the original bill of complaint as — Fenton, — Murdock, and — Cain.

E. G. McADAMS,

Solicitor for Complainant.

Endorsed: No. 484. U. S. Circuit Court, Western District of Oklahoma. Joseph W. Filler, Complainant, vs. S. W. Stone, et al., Defendants. Motion for Order to file Amended Bill of Complaint. Filed Oct. 26, 1909. Harry L. Finley, Clerk.

149 In the United States Circuit Court Sitting Within and for the Western District of the State of Oklahoma.

JOSEPH W. FILLER, Complainant,

vs.

S. W. STONE et al., Defendants.

Order Permitting Amendment of Bill of Complaint.

Complainant herein, having by his solicitor of record E. G. McAdams, filed his motion asking permission of this court to amend said bill of complaint by inserting before the name "Fenton" the initials S. W., and before the name "Murdock," the word William, and before the name "Cain" the initials F. F., so as to make S. W. Fenton, William Murdock and F. F. Cain party defendants, and it appearing from said motion that said S. W. Fenton, William Murdock, and F. F. Cain are the same identical persons as named in the original bill of complaint as — Fenton, — Murdock and — Cain,

It is hereby ordered, adjudged and decreed by the court that the

complainant have leave, and is hereby granted permission to file an amended bill of complaint in conformity with his motion and this order.

JOHN H. COTTERAL, *Judge.*

Endorsed: No. 484. U. S. Circuit Court Western District of Oklahoma. Joseph W. Filler, Complainant, vs. S. W. Stone, et al., Defendants. Order permitting Amendment of Bill of Complaint. Filed Oct. 26th, 1909. Harry L. Finley, Clerk.

150 In the United States Circuit Court Sitting Within and for the Western District of the State of Oklahoma.

JOSEPH W. FILLER, Complainant,
vs.
S. W. STONE et al., Defendants.

Amended Bill of Complaint.

Your complainant, Joseph W. Filler, having first obtained leave of this court, files this his amended bill of complaint, as follows, to-wit:

That he here amends said original bill of complaint by inserting before the name "Fenten," the initials S. W., so as to make S. W. Fenten a party defendant; and before the name "Murdock," the word William, so as to make William Murdock a party defendant; and before the name "Cain" the initials F. F., so as to make F. F. Cain a party defendant.

And your complainant further shows that the said S. W. Fenten and the said William Murdock, and the said F. F. Cain, as herein set out, are the same identical persons who are mentioned and described as — Fenten, — Murdock and — Cain, in the original bill of complaint filed herein.

And your complainant here alleges and makes as a part of this amended bill of complaint, each and every allegation as alleged and set out in his original bill of complaint, as if said allegations were specifically and definitely set forth herein.

E. G. McADAMS,
Solicitor for Complainant.

Endorsed: No. 484. U. S. Circuit Court, Western District of Oklahoma. Joseph W. Filler, Complainant, vs. S. W. Stone, et al., Defendants. Amended Bill of Complaint. Filed Oct. 26, 1909. Harry L. Finley, Clerk.

- 151 United States Circuit Court, Western District of Oklahoma,
Special Guthrie Term, 1909, Tuesday, October 26th,
1909.

484. In Equity.

JOSEPH FILLER, Complainant,

vs.

S. W. STONE et al., Defendants.

Now on this October 26th, 1909, this cause comes on for hearing on the application for a temporary injunction. The Complainant appears in person and by his attorney, E. G. McAdams, the defendants appear by their Attorney, Fred S. Caldwell, who appears for all defendants except H. D. Garrison. Thereupon Complainant obtains leave of court to file his amended bill instantler setting out the first names of defendants omitted previously in his bill of complaint.

Thereupon this cause is continued as to parties H. D. Garrison, not served with notice of this hearing, until tomorrow morning at 10 o'clock A. M. Thereupon complain-t presents his affidavits and evidence, and thereafter it is ordered by the court that complainant be permitted to have time to file his amended bill, alleging citizenship of parties, and it is ordered that this cause be continued for further hearing until Thursday Morning, October 28th, 1909, at 10 o'clock:

- It is further ordered that complainant have until 12 o'clock tomorrow to serve copies of his affidavits to be used on the said
152 hearing on the defendants herein, and that the defendants have until Thursday, October 28th, 1909, to serve copies of their affidavits upon the complainant herein.

- 153 United States Circuit Court, Western District of Oklahoma,
Special Guthrie Term, 1909, Thursday, October 28th,
1909.

484.

JOSEPH FILLER, Complainant,

vs.

S. W. STONE et al., Defendants.

Now on this October 28th, 1909, this cause comes on for further hearing on the application for a temporary injunction. The Complainant is present by his attorney, E. G. McAdams, and in person, the defendants are present by their attorney, Fred S. Caldwell, defendant Garrison appearing by his attorney — Hasen. Thereupon complainant presents his motion for leave to file his amended bill herein alleging the proper citizenship of parties, and the court being fully advised grants the said motion.

Thereupon complainant introduces his affidavits and evidence,

and the defendants present their evidence, and argument of counsel having been heard, the court reserves its decision on the said application for a temporary injunction.

- 154 In the Circuit Court of the United States Sitting Within
and for the Western District of the State of Oklahoma.

JOSEPH FILLER, Complainant,
vs.
S. W. STONE et al., Defendants.

Motion to Amend Bill of Complaint.

Complainant in the above entitled cause, by his solicitor, of record, E. G. McAdams, moves this court for an order permitting complainant to amend his original bill of complaint by alleging after paragraph first thereof, the following allegation:

Your complainant further shows to the court that the defendants, S. W. Stone, B. J. Waugh, Wm. Murdock, S. W. Fenten, F. F. Cain, Fred S. Caldwell, J. M. Hays, William Zwick, Edward Dewes Oldfield, J. J. Beall, H. D. Garrison, G. F. Caffey, W. J. Garrett and John Queenan are residents and citizens of the State of Oklahoma, residing within and being citizens of the Western District of said State of Oklahoma, and your complainant further alleges and shows to the court that said defendants and each of them were such residents and citizens of the State of Oklahoma residing and being within said Western District of said State of Oklahoma at the time of the filing of the original bill of complaint in this cause of action, and that said defendants and each of them are such residents and citizens at this time.

E. G. McADAMS,
Solicitor for Complainant.

Endorsed: No. 484. Joseph Filler, complainant vs. S. W. Stone, et al., Defendants. Motion to Amend Bill of Complaint. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

- 155 In the Circuit Court of the United States Witting Within and
for the Western District of the State of Oklahoma.

JOSEPH FILLER, Complainant,
vs.
S. W. STONE et al., Defendants.

Order.

Your complainant, Joseph Filler, having by his Solicitor of record, E. G. McAdams, filed his motion asking permission of this court to amend said bill of complaint, by inserting the following paragraph:

"Your complainant further shows to the court that the defendants S. W. Stone, B. J. Waugh, Wm. Mu-dock, S. W. Fenton, F. F. Cain, Fred S. Caldwell, J. M. Hays, William Zwick, Edward Dewes Oldfield, J. J. Beall H. D. Garrison, G. F. Caffey, W. J. Garrett and John Queenan are residents and citizens of the State of Oklahoma, residing within and being citizens of the Western District of the State of Oklahoma, and your complainant further alleges and shows to the court that said defendants and each of them were such residents and citizens of the State of Oklahoma residing within and being in the Western District of said State at the time of the filing of the original bill of complaint in this cause of action, and that said defendants and each of them are such residents and citizens at this time." And it appearing to the satisfaction of the court that said amendment should be allowed,

It is hereby ordered, adjudged and decreed by the court that the complainant be allowed and he is hereby allowed to amend said bill of complaint by filing an amendment to his bill of complaint, setting out said paragraph as prayed for in his motion and herein incorporated.

JOHN H. COTTERAL, *Judge.*

Endorsed: No. 484. Joseph Filler vs. S. W. Stone, et al. Order. Leave to file Amendment to Bill of Complaint. Filed Oct. 28, 1909, Harry L. Finley, Clerk.

156 In the Circuit Court of the United States Sitting Within and for the Western District of the State of Oklahoma.

JOSEPH FILLER, Complainant,

vs.

S. W. STONE et al., Defendants.

Amendment to Bill of Complaint.

Your complainant, Joseph Filler, by his Solicitor of record, E. G. McAdams, having first obtained leave of the court, files this his amendment to his bill of complaint by adding thereto the following paragraph:

Your complainant further shows to the court that the defendants S. W. Stone, B. J. Waugh, Wm. Murdock, S. W. Fenton, F. F. Cain, Fred S. Caldwell, J. M. Hays, William Zwick, Edward Dewes Oldfield, J. J. Beall, H. D. Garrison, G. F. Caffey, W. J. Garrett, and John Queenan are residents and citizens of the State of Oklahoma, residing within, and being citizens of the Western District of the State of Oklahoma, and your complainant further alleges and shows to the court that said defendants and each of them were such residents and citizens of the State of Oklahoma residing and being citizens in the Western District of said State at the time of the filing of the original bill of complaint in this cause of action, and that said defendants and each of them are such residents and citizens at this time.

Your complainant herein alleges and pleads as a part of this bill of complaint, each and every paragraph alleged and set out in his original bill of complaint, and all amendments filed thereto as though they were specifically pleaded in this amended bill of complaint, and he makes as a part of this amended bill of complaint, his original bill of complaint, and all amendments thereto filed in this cause.

E. G. McADAMS,
Solicitor for Complainant.

157 STATE OF OKLAHOMA,
Logan County, ss:

On this 28th day of October, A. D. 1909, personally appeared before me the undersigned, Joseph Filler, who, on oath, deposes and says; that he is familiar with the matter and things stated in the foregoing complaint, and the allegations therein stated are true of his own knowledge, except those stated on information and belief, and as to those matters he believes them to be true.

JOSEPH FILLER.

Subscribed and sworn to before me this 28th day of October, 1909.

[SEAL.]

HARRY L. FINLEY,
*Clerk U. S. Circuit Court,
Western Dist. of Oklahoma.*

Endorsed: No. 484. Joseph Filler Complainant, vs. S. W. Stone, et al. Defendants. Amendment to Bill of complaint. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

158 STATE OF OKLAHOMA,
Oklahoma County, ss:

In the Circuit Court of the United States Sitting Within and for the Western District of the State of Oklahoma.

JOSEPH FILLER, Complainant,

vs.

S. W. STONE, B. J. WAUGH, WM. MURDOCK, S. W. FENTON, F. F. Cain, Fred S. Caldwell, J. M. Hayes, William Zwick, Edward Dewes Oldfield, J. J. Beall, H. D. Garrison, G. F. Caffey, W. J. Garrett, and John Queenan, Defendants.

Personally appeared before me, Joseph Filler, who on oath, deposes and says that he is the complainant in the above entitled cause; that he has read the original bill of complaint filed in said cause and all amendments to said bill of complaint filed by permission of this Court; that he knows the contents of said original bill of complaint and each amendment thereto, and that each and every allegation as alleged and set out in said bill of complaint, and the amendments thereto, are true of his own knowledge, except

such matters as are stated upon information and belief, and to those matters, he believes them to be true.

JOSEPH FILLER.

Subscribed and sworn to before me this 27th day of October, A. D. 1909.

[SEAL.]

MARY S. HILL.

My Com. expires Nov. 16, 1911.

Endorsed: Filed Oct. 28, 1909. Harry L. Finley, Clerk. I hereby Ack. service. J. M. Hayes.

159 STATE OF OKLAHOMA,
Oklahoma County, ss:

In the Circuit Court of the United States Sitting Within and for the Western District of the State of Oklahoma.

JOSEPH FILLER, Complainant,

vs.

S. W. STONE, B. J. WAUGH, WM. MURDOCK, S. W. FENTON, F. F. Cain, Fred S. Caldwell, J. M. Hayes, William Zwick, Edward Dewes Oldfield, J. J. Bell, H. D. Garrison, G. F. Caffey, W. J. Garrett, and John Queenan, Defendants.

Now comes Geo. W. Piersol, and upon oath states that he is the President of the Oklahoma State Bank, of Oklahoma City, through which said bank the complainant herein has made collections of interstate shipments of liquor, shipped by the complainant in this case to the various consignees in Oklahoma City who have ordered goods of this complainant; that in each instance drafts have been forwarded to this bank by the complainant, with bills of lading attached, with instructions not to deliver the bill of lading until the payment of the draft; that the bill of lading is drawn "shipper's order, notify" and that the bill of lading for 120 packages of liquor in M. K. & T. car No. 60275, which were recently seized by the enforcement officers was lying in this bank, with draft attached in the manner above indicated, at the time of the seizure of said liquors, and is still in the possession of this bank, pursuant to the instructions given by complainant as aforesaid.

GEO. W. PIERSOL.

Subscribed and sworn to before me this 27th day of October, A. D. 1909.

[SEAL.]

CHAS. H. CLARK,
Notary Public.

My Commission expires June 13th, 1911.

Endorsed: Filed October 28, 1909. Harry L. Finley, Clerk. I hereby acknowledge service, 10-27-'09. J. M. Hayes.

160 STATE OF OKLAHOMA,
Oklahoma County, ss:

In the Circuit Court of the United States Sitting Within and for the
Western District of the State of Oklahoma.

JOSEPH FILLER, Complainant,

vs.

S. W. STONE, B. J. WAUGH, WM. MURDOCK, S. W. FENTON, F. F. Cain, Fred S. Caldwell, J. M. Hayes, William Zwick, Edward Dewes Oldfield, J. J. Bell, H. D. Garrison, G. F. Caffey, W. J. Garrett, and John Queenan. Defendants.

Now comes C. L. Maguire, and upon oath states that he is the Freight Agent of the Missouri, Kansas & Texas Railway Company in Oklahoma City; that at the time of the seizure of the 120 packages of liquor shipped by the complainant, Joseph Filler, in M. K. & T. car No. 60275, the Bill of Lading had never been surrendered to the consignee, and said liquors had never been delivered to the consignee and were still in the possession of said carrier, and that I believe it is the custom of the complainant in making shipments of liquor into this State, to require, in every instance, the payment of the draft before the surrender of the Bill of Lading, and that it is the custom of this affiant and said railroad company, in all instances to demand the surrender of the bill of lading before the delivery of the shipments to the consignee.

C. L. MAGUIRE.

Subscribed and sworn to before me this 27th day of October,
A. D. 1909.

[SEAL.]

MARY S. HILL,
Notary Public.

My Com. expires Nov. 16, 1911.

Endorsed: I hereby acknowledge service 10/27/09. J. M. Hayes.
Filed Oct. 28, 1909. Harry L. Finley, Clerk.

161 STATE OF OKLAHOMA,
Oklahoma County, ss:

In the Circuit Court of the United States Sitting Within and for the
Western District of the State of Oklahoma.

JOSEPH FILLER, Complainant,

vs.

S. W. STONE, B. J. WAUGH, WM. MURDOCK, S. W. FENTON, F. F. Cain, Fred S. Caldwell, J. M. Hayes, William Zwick, Edward Dewes Oldfield, J. J. Bell, H. D. Garrison, G. F. Caffey, W. J. Garrett, and John Queenan, Defendants.

Personally appeared before me, William Zwick, who on oath deposes and says that he is one of the defendants in the above

entitled cause; that he is Justice of the Peace of Oklahoma City Township, County and State aforesaid; that he knows the defendants B. J. Waugh, Wm. Murdock, S. W. Fenton, and F. F. Cain; that it has been the custom of said defendants, or at least some of them, to apply to your affiant, as such Justice of the Peace, for a John Doe warrant for the purpose of searching and seizing intoxicating liquors in the hands and under the control of the different railroads in the City of Oklahoma City, County and State aforesaid.

Your affiant further says that a number of said seizures, made under said warrants, have been held by your affiant as interstate shipments. In spite of the fact, however, of your affiant's order, holding that certain shipments were Interstate Shipments, said officers have, on one occasion, especially, ignored said order, and as your affiant is informed and believes, applied to another Justice of the Peace for a similar warrant for the purpose of seizing the same identical liquors, held by your affiant not to be subject to
162 seizure under the laws in force in the State of Oklahoma.

Further affiant saith not.

WILLIAM H. ZWICK.

Subscribed and sworn to before me this 27th day of October, A. D. 1909.

[SEAL.]

H. T. HOWARD,
Notary Public.

My Com. expires 12/22/1912.

Endorsed: Filed Oct. 28, 1909. Harry L. Finley, Clerk. I hereby ack. service, 10-27-'09. J. M. Hayes.

163 STATE OF OKLAHOMA,
Oklahoma County, ss:

In the Circuit Court of the United States Sitting Within and for the Western District of the State of Oklahoma.

JOSEPH FILLER, Complainant,

vs.

S. W. STONE, D. J. WAUGHT, Wm. MURDOCK, S. W. FENTON, F. F. Cain, Fred S. Caldwell, J. M. Hayes, Edward Dewes Oldfield, William Zwick, J. J. Bell, H. D. Garrison, G. F. Caffey, W. J. Garrett, and John Queenan, Defendants.

Personally appeared before me the undersigned authority J. J. Beall, Justice of the Peace, within and for Oklahoma City Township, State and County aforesaid, who on oath deposes and says that on the 20th day of October, A. D. 1909, he issued a John Doe warrant to one G. F. Caffey, Constable, in and for Oklahoma County, and State aforesaid, to seize intoxicating liquors in M. K. & T. car No. 60275, copy of which is hereto attached and made a part of this affidavit.

Further affiant sayeth not.

J. J. BEALL.

Subscribed and sworn to before me this 27th day of October, A. D. 1909.

A. H. TYLER,
Justice of the Peace.

Endorsed: I hereby acknowledge service, 10-27-'09. J. M. Hayes.
Filed Oct. 28, 1909. Harry L. Finley, Clerk.

164 Copy.

Search Warrant.

In the Name of the State of Oklahoma.

STATE OF OKLAHOMA,
Oklahoma County, ss:

To any sheriff, G. F. Caffey, constable, marshal or policeman in the County of Oklahoma, Greeting:

Proof by affidavit having been made this day before me by B. J. Waugh, showing that on the 20th day of Oct. 1909, John Doe on M. K. T. Freight car 60275, at number M. K. railroad yards in and east of Oklahoma City, in a certain building described as — did, then and there, unlawfully and wilfully have in their possession and under their control, and did, then and there keep, and do now have in their possession and under their control, and do now keep for the purpose of selling, bartering, giving away and otherwise furnishing certain intoxicating liquors, described as follows, to-wit: beer, whiskey, wine in cases, bottles, casks, and receptacles, and all appliances used in dispensing same, and affiant further says that said defendants as aforesaid, at said place and in said building, are now bartering, selling and giving away intoxicating liquors, to-wit: whiskey, beer and wine, and other compounds, the same being intoxicating, in violation of law, contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the State of Oklahoma.

And it appearing that there is probable cause for believing that such grounds are true, you are, therefore, commanded in the day or night, time, to make immediate search of the above described property and to seize and safely keep and bring before the undersigned any and all of the above described property, and to serve a copy of this warrant upon the defendants and each of them, or any persons or persons, in whose possession or under whose control the above described property may be found, and to arrest the said defendants, and each of them, and if no person be found in the possession of said property so state in your return and post a copy of this warrant on the door of the building or room wherein the said property is found and make return of this warrant within three days from the issuance thereof.

Dated this 20th day of October, 1909.

J. J. BEALL,
Justice of the Peace.

8
9

On back: Search Warrant. The State of Oklahoma vs. ———, Defendants. Issued ———, 19—. On complaint filed before ———, Justice of the Peace, in and for Oklahoma City Township, Oklahoma County, State of Oklahoma.

STATE OF OKLAHOMA,
Oklahoma County, ss:

Received this writ this — day of —, 19— and executed the same by arresting said ——— and by seizing the following described property, the same being covered by this warrant, to-wit: ——— on the — day of —, 19— and by bringing the defendants and said property before the Court as commanded.

———, Sheriff,

———, Deputy Sheriff.

Sheriff's Fees.

Executing Search Warrant.....	\$—.	Mileage	\$—.
Arrest.....	\$—.	Commitment	\$—.
Attendance.....	\$—.	Drayage	\$—.

Endorsed: No. 484. In the Circuit Court of the U. S. sitting within and for the Western District of the State of Oklahoma. Joseph Filler, complainant, vs. S. W. Stone, B. J. Waugh, Wm. Murdock, S. W. Fenton, F. F. Cain, Fred S. Caldwell, J. M. Hayes, Wm. Zwick, Edward Dewes Oldfield, J. J. Beall, H. D. Garrison, G. F. Caffey, W. J. Garrett and John Queenan, defendants. Affidavits for complainant on application for Temp. injunction. Filed Oct. 28, 1909. Harry L. Finlay, Clerk.

165 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States Within and for Said District.

No. 484. In Equity.

JOSEPH FILLER, Complainant,

vs.

S. W. STONE, B. J. WAUGHT, WILLIAM MURDOCK, S. W. FENTON, F. F. Cain, J. M. Hays, William H. Zwick, Edward Dewes Oldfield, J. J. Bell, H. D. Garrison, G. F. Caffey, W. J. Garrett, and John Queenan, Defendants.

Appearance of Fred S. Caldwell as Attorney Pro Se and Other Defendants.

To Harry L. Finley, Clerk of the Honorable Circuit Court of the United States within and for the Western District of Oklahoma:

You will please enter my appearance as attorney of record for all of the defendants in the above named cause, except H. D. Garrison.

FRED S. CALDWELL.

Counsel to the Governor.

Endorsed: No. 484. U. S. of America, State of Oklahoma, Western District. Joseph Filler vs. S. W. Stone, et al. Appearance of Fred S. Caldwell as attorney pro se and other defendants. Filed Nov. 1, 1909. Harry L. Finley, Clerk.

166 In the Circuit Court of the United States Sitting Within and for the Western District of the State of Oklahoma.

JOSEPH FILLER, Plaintiff,

vs.

S. W. STONE et al., Defendants.

Temporary Injunction Order.

The above entitled cause came on for hearing before the Court upon complainant's application for a temporary injunction, on Tuesday the 26th day of October, A. D. 1909, pursuant to a former order of this Court. Plaintiff Joseph Filler, appeared by his solicitor of record, E. G. McAdams, and defendants S. W. Stone, B. J. Waugh, Wm. Murdock, S. W. Fenton, F. F. Cain, J. M. Hays, G. F. Caffey, W. J. Garrett, and John Queenan appeared by their counsel Fred S. Caldwell, and the defendant H. D. Garrison, by his counsel John W. Hayson.

The complainant, Joseph Filler, after introducing his bill of complaint and amendments thereto, duly sworn to as affidavits offered and introduced in evidence, affidavits of various parties in support of his bill of complaint, and thereupon rested. The defendants offering no testimony in contradiction thereof.

Thereupon the cause was argued both by the counsel representing the complainant and the defendants, and after hearing the arguments of the counsel, the Court took the same under advisement until this, the 4th day of November, A. D. 1909.

After considering the bill of complaint, and the affidavits offered in support thereof, the Court finds that the relief prayed for by this complainant should be granted, and that a temporary injunction should issue.

167 It is therefore ordered this 4th day of November, 1909, that S. W. Stone, B. J. Waugh, Wm. Murdock, S. W. Fenton, F. F. Cain, J. M. Hays, H. D. Garrison, G. F. Caffey, W. J. Garrett, and John Queenan, and each of them, and all persons acting by, through or under them, or either of them, are hereby enjoined, until further order of this Court, from seizing or causing to be seized, either directly or indirectly, any intoxicating liquors shipped by the complainant, Joseph Filler, from the State of Missouri, to actual bona fide consignees within the Western District of the State of Oklahoma, while in the possession of the common carrier, and before the same have been delivered to such consignees. Provided, however, that this order shall not apply to any liquors shipped in violation of Section 3449 of the Revised Statutes of the United States, or any other Act of Congress, or to any liquors which are adulterated or misbranded within the meaning of Act of Congress of June

30, 1906, ch. 3915, 34 Stat. L. 768, commonly known as the Pure Food and Drug Act.

This order to become effective upon the complainant, Joseph Filler, executing and filing a good and sufficient bond within fifteen days in the sum of Five Thousand (\$5,000.00) Dollars to be approved by the Clerk of this Court, indemnifying the defendants herein against any damage they may sustain thereby in the event it shall be determined that this order should not have been issued.

It is further ordered that the complainant, Joseph Filler, have fifteen (15) days in which to execute and file said bond, and that in the meantime, the restraining order heretofore issued by this Court shall remain in full force and effect.

To which order and decree the defendants, and each of them, at the time duly excepted, on the ground that said order and
168 decree is contrary to law in that complainant's bill does not state facts sufficient to constitute a cause of action against defendants, or any of them, and that said order and decree is in violation of Sec. 720, of the Revised Statutes of the United States and in violation of the Eleventh Amendment to the Constitution of the United States.

JOHN H. COTTERAL, *Judge.*

(O. K.

FRED S. CALDWELL.)

Endorsed: No. 484. U. S. Circuit Court, Western District, State of Oklahoma. Joseph Filler, vs. S. W. Stone, et al. Temporary Injunction Order. Filed Nov. 4th, 1909, Harry L. Finley, Clerk.

169 In the Circuit Court of the United States Sitting Within and for the Western District of the State of Oklahoma.

JOSEPH FILLER, Complainant,

vs.

S. W. STONE et al., Defendants.

Application for An Order Citing the Defendant F. F. Cain and One R. A. Young and One A. S. Peacock to Show Cause Why They Should Not Be Punished for Contempt.

Comes now the plaintiff, Joseph Filler, by his solicitor or record, E. G. McAdams, and respectfully shows to the Court that on the 4th day of November, A. D. 1909, this Court issued in the above entitled cause, a temporary injunction order, enjoining one S. W. Stone, B. J. Waugh, Wm. Murdock, S. W. Fenton, F. F. Cain, J. M. Hayes, H. D. Garrison, G. F. Caffey, W. J. Garrett and John Queenan, and each of them, and all persons acting by, through or under them, or each of them, until further order of the Court, from seizing or cause- to be seized either directly or indirectly, any intoxicating liquors shipped by the complainant Joseph Filler, from the State of Missouri, to actual bona fide consignees within the Western District of the State of Oklahoma, while in the possession of the

common carrier, and before the same had been delivered to the consignee.

Your complainant Joseph Filler, by his solicitor of record, E. G. McAdams, alleges and states that on the 11th day of November, A. D. 1909, one R. A. Young, and one A. S. Peacock, who as your complainant is informed and believes, were on said date working under the direction and control of the defendant, F. F. Cain, in the above entitled cause, as State Enforcement Officers, of the State of Oklahoma, and that the said R. A. Young and A. S. Peacock, did

on said date, violate the said Temporary Injunction Order
170 issued by this Court, in the above entitled cause as above set out, which violation of said order will more fully appear by the affidavit of L. S. Gowen, which is hereto attached, marked Exhibit "A" and made a part of this application; also the affidavit of Al. Gilbrech, which is hereto attached, marked Exhibit "B," and made a part of this application.

Your complainant further shows to the Court that said order has been violated by the said R. A. Young, as will more fully appear by the affidavit of Joe Casey, which is hereto attached, marked Exhibit "C" and made a part of this application. Also the affidavit of W. D. Ozman, which is hereto attached, marked Exhibit "D" and made a part of this application. Also the affidavit of H. Dungey, hereto attached, marked Exhibit "E" and made a part of this application.

Wherefore, your complainant respectfully moves the Court that an order be issued by this Court, citing the defendant- F. F. Cain, R. A. Young, and A. S. Peacock, to show cause why they should not be punished for the violation of the order of this Court, hereinbefore referred to.

E. G. McADAMS,
Solicitor for Complainant.

171 EXHIBIT "A."

STATE OF OKLAHOMA,
Oklahoma County, ss:

Personally appeared before me, L. S. Gowen, who on oath deposes and says; that he is a resident of the City of Oklahoma City, County and State of Oklahoma; that about ten days ago he ordered of and from Joseph Filler, of St. Louis, Mo., one cask of beer; that he signed the order A. S. Gowen, but that the beer was intended to be the property of this affiant, whose real name is L. S. Gowen.

Affiant further states that said beer was ordered for his own personal use, and not for the purpose of violating any of the laws now in force in the State of Oklahoma.

Affiant further says that said beer has not been received by this defendant, nor has the same been delivered to him.

L. S. GOWEN.

Sworn to and subscribed before me this 19th day of November, A. D. 1909.

[SEAL.]

M. E. NICHOLS,
Notary Public.

My Commission expires Apr. 3, 1911.

172

EXHIBIT "B."

STATE OF OKLAHOMA,
Oklahoma County, ss:

Personally appeared before me, Al Gilbrech, who on oath deposes and says that on the 11th day of November, A. D. 1909, he was employed by the Dungey Transfer Company of Oklahoma City.

Affiant further states that he was sent by H. Dungey, who is the owner of the Dungey Transfer Company, to the M., K. & T. Depot in the City of Oklahoma City, County and State of Oklahoma, and to there get from said Railway Company, one cask of beer, consigned to one Gowen.

Affiant further says that in pursuance to the order of H. Dungey, as aforesaid set out, he went to the M., K & T. Depot, and there got one cask of beer addressed to the said Gowen.

Affiant further states that there was a tag on said cask of beer, showing that the same had been shipped by Joseph Filler from St. Louis, Mo., to the said Gowen, Oklahoma City, Oklahoma, via Dungey Transfer Company.

Affiant further says that after he received the said beer from the M., K. & T. Depot, he started with the same to the residence of the said Gowen, in the City of Oklahoma City; that after he left the depot, and before he reached the residence of the said Gowen, he was intercepted by one R. A. Young and one Peacock, who as this affiant is informed and believes, was then, and are now, known as State Enforcement Officers, of the State of Oklahoma, and that they and each of them were then, and are now, working under the direction and control of one F. F. Cain.

Affiant further says that the said R. A. Young and G. C. Peacock proceeded to take from the possession of this affiant, the said cask of beer, so as aforesaid addressed to the said Gowen.

Affiant further says that the said R. A. Young and one Peacock examined the tax on said cask of beer, which tag clearly
173 showed that it was shipped by Joseph Filler from St. Louis, Mo., to one Gowen of Oklahoma City, County and State of Oklahoma, whose given name this affiant is unable to give at this time.

Affiant further says that the said R. A. Young and the said one Peacock then and there proceeded to take possession of the said beer and took this affiant to the County Jail of Oklahoma County, State of Oklahoma, and filed a complaint in the County court of Oklahoma County, or caused the same to be filed, charging this affiant, as he is informed and believes, with transporting intoxicating liquors, contrary to law in the County of Oklahoma. State of Oklahoma.

Affiant further says by reason of the act of said R. A. Young and the said one Peacock, he was prohibited from delivering said cask of beer to the said Gowen.

Further affiant saith not.

AL GILBRECH.

Sworn to and subscribed before me this 19th day of November,
A. D. 1909.

[SEAL.]

EDITH E. LOOMIS,
Notary Public.

My Com. Exp. Feb. 5, 1912.

174

EXHIBIT "C."

STATE OF OKLAHOMA,
Oklahoma County, ss:

Personally appeared before me, Joe Casey, who on oath deposes and says that he is a resident of the town of Capitol Hill, located in Oklahoma County, State of Oklahoma.

Affiant further says that during the latter part of October, or the first of November, A. D. 1909, he ordered of and from Joseph Filler, of St. Louis, Mo., two casks of beer and one cask of whiskey, by signing an order therefor in the County of Oklahoma, and State of Oklahoma, the same to be shipped by the said Joseph Filler from St. Louis, Mo., to this affiant.

Affiant further says that neither the said beer or whiskey has been received by or delivered to this affiant from the said Joseph Filler.

Affiant further states that said intoxicating liquors were ordered for his own personal use and that of his family, and was not purchased by this affiant nor did he expect to use the same for the purpose of violating any of the laws relative to intoxicating liquors now in force in the State of Oklahoma.

JOE CASEY.

Sworn to and subscribed before me this 19th day of November,
A. D. 1909.

[SEAL.]

EDITH E. MOOMIS.

My Com. Exp. Feb. 5, 1912.

175

EXHIBIT "D."

STATE OF OKLAHOMA,
Oklahoma County, ss:

Personally appeared before me W. D. Ozman, who on oath deposes and says that on the 13th day of November, A. D. 1909, he was employed as a driver by the Dungey Transfer Company of Oklahoma City.

Affiant further states that he was sent by H. Hungey, who is the owner of the Dungey Transfer Company, to the M., K. & T. depot in the City of Oklahoma City, County and State of Oklahoma, to there get from said Railway Company, two casks of beer, assigned to Joe Casey.

Affiant further says that in pursuance to the order of H. Dungey,

as hereinbefore set out, he went to the M., K. & T. depot in the City of Oklahoma City, County and State of Oklahoma, and there got two barrels of beer, addressed to Joe Casey.

Affiant further says that there was a tag on each of said barrels, showing that the same had been shipped by Joseph Filler from St. Louis, Mo., to Joe Casey, Oklahoma City, via Dungey Transfer Company.

Affiant further states that after he received said beer from the M., K. & T. depot, he started with the same to the residence of the said Joe Casey; that after he left the depot and before he reached the residence of the said Joe Casey, he was intercepted by one R. A. Young, who as this affiant is informed and believes, was then and is now known as one of the State Enforcement Officers, and that he works under the direction and control of one F. F. Cain, and that the said Young proceeded to take possession of this affiant and the said two casks of beer, so as aforesaid addressed to the said Joe Casey.

176 Affiant further says that he informed the said R. A. Young that he was taking said beer to the residence of the said Joe Casey, and that the said beer was shipped by Joseph Filler, of St. Louis, Missouri, to the said Joe Casey, and that there was a Federal Injunction against the Enforcement Officers, prohibiting them from interfering with shipments of intoxicating liquors by the said Joseph Filler, until the same had been delivered to the consignee, and that he was then transporting the same from the depot to the residence of the said Joe Casey.

Affiant further says that the said R. A. Young climbed up into the wagon in which this affiant had the beer, and examined the tag thereon, which clearly showed that it was shipped from Joseph Filler of St. Louis, Mo., to Joe Casey, Oklahoma City, Oklahoma.

Affiant further says that the said R. A. Young then and there proceeded to take possession of the wagon and beer, and took this affiant to the County Jail of Oklahoma County, State of Oklahoma.

Affiant further states by reason of the acts of the said R. A. Young, he was prohibited from delivering said beer to the said Joe Casey.

Further affiant saith not.

W. D. OZMAN.

Sworn to and subscribed before me this 19th day of November, 1909.

[SEAL.]

EDITH E. LOOMIS.

Mt Com. Exp. Feb. 5, 1912.

177

EXHIBIT E.

STATE OF OKLAHOMA,
Oklahoma County, ss:

Personally appeared before me H. Dungey, who on oath deposes and says; that he is the owner of the Dungey Transfer Company of Oklahoma City, County and State of Oklahoma; that his business is

that of a general nature, in transporting goods, wares and merchandise to and from the different parts of the City of Oklahoma City, County and State of Oklahoma.

Affiant further states that in the course of his business he is often called upon by customers to transport intoxicating liquors from different depots and express offices in the City of Oklahoma City, to their place of business and residence.

Affiant further says that he is not now, nor has he at any time since the admission of this State into the Union, been engaged in the sale of intoxicating liquors, contrary to the laws now in force in the State of Oklahoma; that he had no personal interest in the liquors referred to in the affidavits of L. S. Gowen and Joe Casey; that the only interest he had was to transport the same or cause the same to be transported to their residences, and to receive the usual and customary price for transporting the same as a drayman.

Affiant further says that on the 16th day of November, A. D. 1909, he had one W. D. Ozman employed as one of his drivers, and that on the 11th day of November, A. D. 1909, he had Al Gilbrech employed.

H. DUNGEY.

Sworn to and subscribed before me this 19th day of November, A. D. 1909.

[SEAL.]

EDITH E. LOOMIS.

My Com. Exp. Feb. 5, 1912.

Endorsed on back of paper: No. 484. Filler vs. Stone et al. Application for an order Citing the defendants F. F. Cain and one R. A. Young and one A. S. Peacock to show cause why they should not be punished for contempt. Filed Nov. 22, 1909. Harry L. Finley, Clerk.

178 UNITED STATES OF AMERICA,

State of Oklahoma, Western District, ss:

In the Circuit Court of the United States Within and for Said District.

No. 484. In Equity.

JOSEPH FILLER, Complainant,

vs.

S. W. STONE, B. J. WAUGH, WILLIAM MURDOCK, S. W. FENTON, F. F. Cain, J. M. Hays, William H. Zwick, Edward Dewes Oldfield, J. J. Bell, H. D. Garrison, G. F. Caffey, W. J. Garrett, and John Queenan, Defendant.

Demurrer for Lack of Jurisdiction and Equity.

These respondents, S. W. Stone, B. J. Waugh, William Murdock, S. W. Fenton, F. F. Cain, J. M. Hays, William H. Zwick, Edward

Dewes Oldfield, J. J. Bell, G. F. Caffey, W. J. Garrett and John Queenan, by protestation, not confessing or acknowledging all, or any of the matters or things in the said bill of complaint contained, to be true, in such manner as the same are therein set forth and alleged, demur to the said bill; and for cause of demurrer show:

I.

That it appears by the complainant's own showing by the said bill that he is not entitled to the relief prayed by said bill against these respondents, or any of them.

II.

That it appears from said complainant's bill of complaint that his business operations which he seeks to have protected by a decree of injunction of this Honorable Court are based upon, involve, and grow out of, acts and practices by him committed and carried on in direct violation of the criminal laws of the State of Oklahoma.

179

III.

That it appears from complainant's said bill of complaint that this Court has no jurisdiction to hear and determine this action, and that the relief prayed for is sought in direct violation of the Eleventh Amendment to the Constitution of the United States, and of Section 720 of the Revised Statutes of the United States.

IV.

That complainant's said bill of complaint is wholly without equity.

Wherefore, and for divers other good causes of demurrer in said bill, these respondents demur thereto, and they and each of them pary the judgment of this Honorable Court whether they shall be compelled to make further or any answer to complainant's said bill; and they and each of them humbly pray to be hence dismissed with their reasonable costs in their -half sustained.

FRED S. CALDWELL,
Solicitor for Respondents.

Verification.

STATE OF OKLAHOMA,
County of Logan, ss:

Fred S. Caldwell, being first duly sworn on oath says: That he is the solicitor for the respondents for the foregoing demurrer in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point of law; and on behalf of said respondents, and each of them says, that the same is not interposed for delay.

FRED S. CALDWELL.

Subscribed and sworn to before me this 4th day of December, 1909.

[SEAL.]

JULIET WRIGHT,
Notary Public.

My Com. Exp. Dec. 19, 1911.

Endorsed: No. 484, U. S. of America, State of Okla. Western Dist. Joseph Filler, vs. S. W. Stone, et al. Demurrer, Filed Dec. 4, 1909. Harry L. Finley, Clerk.

180 Circuit Court of the United States, Western District of Oklahoma, January Term, 1910, Friday, February 11th, 1910.

484.

JOSEPH FILLER, Complainant,
vs.
S. W. STONE et al., Defendants.

Now on this February 11th, 1910, it is ordered that the application of complainant for a citation for contempt against certain defendants herein, be and the same is hereby assigned for hearing on Friday, February 18th, 1910, at 10 o'clock, A. M.

181 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. 488. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under the Name and Style of The Cooke County Liquor Company, Complainants,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garnett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, Defendants.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States for the Western District of the State of Oklahoma:

William Swartz and D. Dreeben, partners doing business under the name and style of The Cooke County Liquor Company, and citizens & inhabitants of the United States and of the State of Texas, residing at Gainesville in the said State of Texas, brings this, their

bill of complaint, against Charles N. Haskell, S. W. Stone, Fred S. Caldwell, John Hayes, C. F. Caffey, W. J. Garrett, John Queenan, S. W. Fenton, F. F. Cain, William Murdock and B. J. Waugh, defendants above named, and occupying the official positions hereinafter more fully set forth, all of whom are citizens, residents and inhabitants of the State of Oklahoma in the Western District thereof, and complain of said defendants and say:

I.

That your orator is engaged in business as dealer in alcoholic and intoxicating liquors, and has its office and place of business in the City of Gainesville, County of Cooke, and State of Texas, and that they have built up and now enjoy a large and lucrative business in the sale of such liquors in the State of Texas, and a part of their business consists, in a large part, in the sale of liquors in the State of Texas, to customers residing outside of the State of Texas, including customers of the State of Oklahoma. That its principal method and custom of making shipments into various places, including the State of Oklahoma, is to receive mail orders for said shipments direct from their customers outside of the State for sales of liquors to be made in Texas, and after said orders are accepted by your orator to deliver said liquors to the Gulf, Colorado & Santa Fe Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Missouri, Kansas & Texas Railway Company, and the Wells Fargo & Company's Express and other common carriers at Gainesville, the shipping point in said State of Texas for transportation from said point to the various points in the State of Oklahoma where said customers reside, the said common carriers agreeing to transport said liquors by interstate shipment from Gainesville to said points in Oklahoma, and there to deliver to said customers in Oklahoma the said liquors. And in all cases wherein said liquors are shipped, as aforesaid, from said point in Texas to Oklahoma the sales are made outside the State of Oklahoma to be delivered to the consignees in the State of Oklahoma by the carrier aforesaid.

183 Your orator further shows that their custom is, after delivering the said liquors to the railways and express companies for shipment, as aforesaid, to said point in the State of Oklahoma, to receive from the carrier a bill of lading, which bill of lading is generally made out in the following form, and to forward said bill of lading to some bank or responsible person, to be delivered to the purchaser upon payment of a draft for the purchase price which is attached to said bill of lading. The bill of lading generally used being in substance and form about as follows:

"Received from ——— in apparent good order, the following orders marked ——— to be delivered in like good order. Gainesville, Texas, ——— By ——— Railway. To shipper's order. Notify ———. Marks ———. No. ———. Article ———. Freight prepaid."

The railway company or other carrier filling in the blanks so

as to agree with the dates, names of purchaser, character of goods, and the name of the consignee to be notified as they are shown, and that the custom and understanding between the parties to said transaction is that it gives to the shipper the right to stop said goods at any time before the said goods are delivered to the said purchasers at their destination in Oklahoma, and before the surrender of the bill of lading and the said goods are not delivered to the said purchaser or consignee until they arrive at their said destination and are delivered to the consignee upon the production and surrender of said bill of lading. Each box is plainly marked thereon with the name and address of the consignee.

Your orator further shows that at this time complainants have many orders for said goods, to be sold in Texas and shipped by carrier, as aforesaid, to Oklahoma, at various points therein, to be delivered there to the consignees in the manner and form hereinbefore set out, and their legitimate profits on said sales so made in Texas for shipments into the State of Oklahoma will be
 184 largely in excess of five thousand dollars (\$5000.00), and they have accepted said orders and expect in the proper and legitimate exercise of its right to engage in commerce with the citizens of Oklahoma to continue said business and their said profits, and to continue to accept orders at their said office in Gainesville for sales in Texas and deliveries in Oklahoma, as aforesaid, and that they are not participating in any unlawful sale of intoxicating liquors in the State of Oklahoma, but are only engaged in their said legitimate business of engaging in interstate commerce, as aforesaid, and said goods are not shipped for the purpose of being used for any unlawful purpose or for the purpose of being bartered, sold or given away in the State of Oklahoma.

II.

Your orator further shows that the defendant, Charles N. Haskell is the duly qualified and elected governor of the State of Oklahoma, and as such he is the head of the executive department of said State. That the defendant Caldwell is the duly appointed counsel to the Governor. That the defendant John Hayes is the duly appointed assistant counsel to the Governor; that the defendants Caffey, Garrett and Queenan are duly elected and qualified constables in Oklahoma City in Oklahoma County in said State; that the defendant Stone is the duly appointed dispensary agent for the State of Oklahoma; and the defendants Waugh, Fenton and Murdock and Cain all are claiming to be some kind of state officers employed by the defendants Haskell, Stone, Caldwell and Hayes, and acting under and pursuant to their direction, control and supervision in the commission of the wrongs and trespasses hereinafter more fully set out. That said Haskell, Stone, Caldwell and Hayes, claiming to be enforcing the provisions of a certain act of
 185 the legislature of the state of Oklahoma, known as the "Billips Bill," and otherwise known as the "Enforcing Act," which alleged bill has for its object, or claims to have for its object the prohibition of the bartering, selling or giving away of intoxi-

eating liquors in the State of Oklahoma and the enforcement of same, have instructed the other defendants herein, and many other and numerous parties whose names are unknown to these complainants, that all shipments of intoxicating liquors made in the manner and form hereinbefore set out are illegal and in violation of said Enforcing Act, and that said alleged act of the Oklahoma legislature prohibiting the bartering, selling or giving away of intoxicating liquors applies to and includes within its provisions all shipments of liquor which are known as interstate shipments while same are still in the hands of the carrier for transportation and delivery before surrender of the bill of lading and delivery to the consignees and made in the manner and form hereinbefore set out; and said Haskell, Stone, Caldwell and Hayes, and their other agents, acting under their instructions, directions and orders, have ordered, authorized and directed said Waugh, Cain, Fenton, Murdock, and numerous others whose names are unknown to complainant, to seize and confiscate and appropriate to their own use and to the use of the State of Oklahoma all liquors so shipped by complainants in the manner and form hereinbefore set out while the same are in the hands of the railway companies in the State of Oklahoma, and before delivery to the consignees as aforesaid, and while in course of transportation, as aforesaid, whereby it is their purpose and intention to deprive complainant of the possession and value of said goods and prevent them from engaging further in the business of making interstate shipments, as hereinbefore described.

III.

That heretofore, and on divers dates and occasions during 186 the months of June, July, August, September, and October, 1909, complainants, pursuant to their said method of doing business as aforesaid, and following out their right to engage in legitimate interstate commerce with the citizens of Oklahoma, did ship from the State of Texas to many parties residing in Oklahoma, at various points, and especially in Oklahoma City, certain intoxicating liquors, consisting of wine, whiskey, beer, etc., aggregating in value over six thousand dollars (\$6000.00). That said shipments were made upon orders received and accepted in Texas, and said liquors were sold in Texas, and delivered in said State of Texas to the Gulf, Colorado & Santa Fe Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Missouri, Kansas & Texas Railway Company, and the Wells Fargo & Company Express, and other carriers for transportation and delivery to said Oklahoma City and other points in Oklahoma, and that while said liquors which were so intended for said purchasers in Oklahoma City was in the course of transportation and in the hands of said carriers in Oklahoma and before consummation of the said interstate shipment, by surrender to consignee of said bill of lading, the said defendants Caffey, Queenan, Garrett and others, acting under the immediate instructions, directions and control of the defendants Hayes, Waugh, Fenton, Cain and Murdock, and of other parties whose names are unknown, acting under the control of said defendants above named,

and all of said parties, acting under the direction and control of the defendants Haskell, Stone and Caldwell, and claiming to act under and by virtue of search warrants issued out of the Justice Court of Oklahoma county by one William H. Zwick, Justice of the Peace, did seize all of said liquors that were then in the hands of said carriers, and by force and arms did deprive the said carriers of the possession thereof, with the intent to permanently appropriate the same to the use of the said defendants, and for the use of the State of Oklahoma, and did publicly assert their intention to permanently confiscate the said liquors and all of said defendants, pursuant to an understanding between them to prevent these complainants from carrying on their said legitimate business of making interstate shipments from the State of Texas to the State of Oklahoma, as aforesaid, have threatened, and do intend to carry out said threats, and do openly assert it to be their intention, to seize and confiscate all liquors which this claimant intend hereafter to make in the manner and form set out, while the same are in the hands of common carriers and constitute a part of an interstate shipment of liquors, in course of transportation, and before delivery to the consignees.

IV.

Your orators further show that the alleged and pretended search warrants which were so issued by the Honorable William H. Zwick, Justice of the Peace, as aforesaid, were issued, or claimed to be issued, pursuant to the provisions of the prohibition act of Oklahoma known as the Billups Bill, as aforesaid, but that the said Billups Bill has no application to the shipments so made by the complainants and intended hereafter to be made by them because the provisions of the said Billups Bill, in so far as the same is applied or intended to be applied, to interstate commerce shipments are unconstitutional and void and of no effect. And your orators further show that said Billups Bill, under which defendants claim to be acting, even if the same were valid and applied to shipments of the character hereinbefore set out, furnishes no adequate protection to complainants whatever, either as to the goods which have already been wrongfully seized by the defendants, and which are now in their possession under said wrongful seizures, or as to the goods which these complainants intend to ship, and which the said defendants intend to seize, as hereinbefore set out. That after said defendants had wrongfully seized said goods as aforesaid under said pretended search warrants, the complainants, seeking to protect themselves, appeared before the Honorable William H. Zwick, Justice of the Peace, upon the day upon which said cause was set for trial, and upon the day upon which the cause as to the status of the goods so seized were to be adjudicated, and on said hearing said William H. Zwick, after hearing the evidence, and after hearing counsel for said defendants purporting to represent the State of Oklahoma, and counsel for these complainants, adjudicated that said liquors were not subject to seizure and confiscation under the laws of Oklahoma, and that the same were interstate commerce ship-

ments, and ordered that said liquors be restored to the respective carriers from whom they were wrongfully taken, as aforesaid. That said William H. Zwick thereupon issued his order directing the Sheriff of Oklahoma County to carry said judgment to effect, and that the sheriff of Oklahoma county did take possession of a part of said liquors and restore the same to the carrier from whose possession they were taken. And thereupon immediately after the same were restored to the said carrier, and before the same were delivered to the original consignees, the above named defendants, Hayes, Waugh, Fenton, Cain, Murdock and Caffey, again seized said liquors under certain pretended search warrants which were obtained from one J. J. Beall, in another Justice Court, and still retain said liquors in their possession, regardless of the judgment rendered in favor of said liquors and of these complainants by the Honorable William H. Zwick,

thereby necessitating another trial before the said Beall, as
189 Justice of the Peace, of the said issue so tried before the said

Zwick; and these complainants aver the facts to be that said defendants openly assert their intention that if said goods are adjudicated by said Beall to be not subject to seizure and are ordered restored to the carriers, that they will seize the same again under certain pretended search warrants to be issued by another court, and that said defendants Hayes, Waugh, Fenton and Cain, claiming to be acting under the directions and instructions of the defendants Haskell, Stone and Caldwell, openly assert their intention to continue such course of seizures and attempted confiscation towards all liquors which may be hereafter shipped by these complainants in the manner and form hereinbefore set out, and while same are in the custody of the carriers as aforesaid, and before delivery to the consignee. Your orator further shows that such course of conduct upon the part of defendants would necessitate a multiplicity of suits in order to protect the rights of these complainants, both as to the property already seized and the property hereafter to be shipped by complainants, and will necessitate a great expense and outlay of money. That all of the said defendants who are making said seizures are irresponsible parties, financially. That none of them are under bond, except the said constables, who are under a small bond of one thousand dollars (\$1000.00) each, and that large quantities of goods are being entirely stolen, or claimed to be stolen, from the warehouses in which said parties are storing said goods, and if said parties are permitted to seize and confiscate the goods of these complainants which they intend hereafter to ship to their customers, the business of these complainants would be utterly ruined, and that they will be compelled to cease engaging in interstate commerce,

and will lose thousands of dollars of profits, to which they are
190 justly entitled, and that these complainants can obtain absolutely no redress in the courts of Oklahoma, as aforesaid, because, under the provisions of said alleged Billups Bill no action of replevin will lie, and these complainants are compelled to apply to this court and to appeal to its equitable powers for relief in order to protect the rights and privileges guaranteed to them under the laws and Constitution of the United States, and that irreparable damage

and injury will be inflicted upon the business of these complainants by reason of the wrongful acts hereinbefore set out.

V.

Your orator further shows that it is claimed by the defendants that all intoxicating liquors found in the State of Oklahoma which have been shipped by complainants in the manner and form hereinbefore set out, and even though still in the course of transportation and part of interstate shipments, are subject to seizure and confiscation under the laws of Oklahoma, and said pretended seizures are made under and by virtue of said claim.

The premises considered, complainants pray that the defendants Charles N. Haskell, as governor of the State, S. W. Stone, Fred S. Caldwell, and John Hayes, be enjoined and restrained from further advising, aiding, abetting, encouraging or instructing any of the other defendants herein, or any other person or persons under their control or within their employ, or within the employ of the State of Oklahoma, that it is illegal to make shipments of alcoholic liquors into the State of Oklahoma in the manner and form heretofore referred to, and that they be enjoined and restrained from advising, aiding, abetting, encouraging or instructing any of the other defendants herein, or any other person or persons in their employ, or

in the employ of the State of Oklahoma, to seize any shipments that may now be in the hands of any common carrier, either in the city of Oklahoma City, or any other point in the State of Oklahoma which have been shipped in the manner and form hereinbefore set out, and are still in the hands of said carriers for transportation and delivery to consignees, and which said shipments have been made by these complainants in the manner and form hereinbefore set out.

Complainants further pray that the defendants Waugh, Cain, Murdock, Fenton, Caffey and Garrett, and all persons acting under their authority or control be enjoined and restrained from seizing any shipments or parts of shipments of intoxicating liquors which may be in the hands of any common carrier in Oklahoma City or any other point in the State of Oklahoma, and which have been shipped or may hereafter be shipped by these complainants to consignees in the State of Oklahoma in the manner and form hereinbefore set out while the same are in the hands of such carriers for transportation and before delivery to the consignees and surrender of the bill of lading and while said shipments are interstate shipments. That upon the final hearing of this cause the injunction herein prayed for may be made perpetual, and for such other and further and general relief as to your Honors may seem meet and just in the premises. And your orators further pray to grant unto your orators a writ of subpoena issue out of and under the seal of this Honorable court, to be directed to the said Charles N. Haskell as governor, S. W. Stone, acting dispensary agent, Fred S. Caldwell, counsel to the governor, John Hayes, assistant counsel to the governor, G. F. Caffey, as constable, W. J. Garrett, as constable, John Queenan, as constable, and to said pretended enforcement officers, B. H. Waugh, F. F. Cain, S. W. Fenton, William Murdock, command-

ing them on a certain day and date and under a certain
 192 penalty, in said writ personally to be and appear before You

Honors and this Honorable Court, and then and there a full
 true and perfect answer make to all and every premises, and further
 to abide, stand by, and perform all orders made by this Honorable
 Court, and that in the meantime a temporary restraining order is
 sue restraining and enjoining these defendants and each of them
 until the further order of this court, from performing any and all
 of the acts hereinbefore set out. Your orator further prays that
 this bill may be amended from time to time by adding the names of
 such parties thereto as causes therefor may arise and the said
 parties are engaged with the other parties herein in assaults upon
 the property of these complainants in the manner hereinbefore set
 forth. And your orators will forever pray for such other and
 further relief in law and equity as they may be entitled to in the
 premises.

GIDDINGS & GIDDINGS,
 GEO. H. GIDDINGS,
 E. J. GIDDINGS,

Solicitors for Complainants.

UNITED STATES OF AMERICA.

Western District of Oklahoma.

City and County of Oklahoma:

D. Dreeben, being duly sworn, deposes and says that he is one
 of the members of the partnership composed of William Swartz and
 D. Dreeben, doing business under the name and style of The Cook
 County Liquor Company. That he has read the above and foregoing
 bill of complaint, and knows the contents thereof, and that the
 same is true of his own knowledge, except as to the matters

193 which are therein stated on information and belief, and as to
 those matters he believes it to be true.

D. DREEBEN.

Subscribed and sworn to before me this 1st day of October, 1909

[SEAL.]

MARY S. HILL,
Notary Public

My com. expires Nov. 16, 1911.

Endorsed: No. 488. In the U. S. Circuit Court, Western District
 Oklahoma. Wm. Swartz and D. Dreeben, Plaintiff, vs. Chas. N.
 Haskell, et al., Defendants. Bill of complaint. (Original). Filed
 Oct. 22, 1909. Harry L. Finley, Clerk.

194 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 488. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under the Name and Style of The Cooke County Liquor Company, Complainant,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; J. Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, Defendants.

Restraining Order.

This cause coming on to be heard on this the 22nd day of October, A. D. 1909, upon the complaint of the plaintiff, and the Court, after being fully advised in the premises, is of the opinion that a temporary restraining order should issue.

It is therefore ordered that the defendants John Hayes, B. J. Waugh, S. W. Fenton, F. F. Cain, William Murdock, G. F. Caffey, John Queenan, and W. J. Garrett, and each of them, and all persons acting by, through or under them be and they are hereby restrained from seizing or causing to be seized, either directly or indirectly, any intoxicating liquors shipped by the complainant, The Cooke County Liquor Company, from Gainesville, Texas to consignees within the Western District of the State of Oklahoma, while in the possession of the common carrier and before the same have been delivered to such consignees.

It is further ordered that the defendants, and each of them,
195 be served with a notice of this order to be and appear before the Court at the Federal Court Room in Guthrie, Oklahoma, on Tuesday, the 26th day of October, A. D. 1909, at 10:00 o'clock A. M. and to then and there show cause why a temporary injunction should not be issued, as prayed for in the complainant's bill.

It is further ordered that the restraining order herein granted shall be in force and effect until the time fixed for the hearing of said application for a temporary injunction, and until a further order of the court.

It is further ordered that a copy of this order, certified under the hand of the Clerk and seal of the Court, be served on the defendants, and each of them, by the Marshal of the Western District of Oklahoma.

This order to become effective upon the complainant, The Cooke County Liquor Company, executing and filing a good and sufficient bond in the sum of One Thousand Dollars, (\$1000.00), to be approved by the Clerk of this Court, indemnifying the defendants herein against any damage they may sustain thereby in the event it

shall be determined that this Restraining Order should not have been issued.

JOHN H. COTTERAL, *Judge.*

Endorsed: No. 488. William Swartz and D. Dreeben, partners doing business under the name and style of The Cooke County Liquor Company, Complainant, vs. Charles N. Haskell, Governor, et al., Defendants. Restraining order. Filed Oct. 22nd, 1909. Harry L. Finley, Clerk.

196 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. —. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under the Name and Style of The Cooke County Liquor Company, Complainants,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Haynes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, Defendants.

Affidavit.

STATE OF OKLAHOMA,
Oklahoma County:

H. D. Garrison, being duly sworn, deposes and says that he is the Sheriff of Oklahoma county, State of Oklahoma. That on the — day of October, 1909, certain writs of execution were placed in his hands by Honorable William H. Zwick, Justice of the Peace, to deliver to certain railroad companies certain intoxicating liquors which had been seized under search warrants while in the possession of said railroad companies which have been adjudicated by the said William H. Zwick as not subject to seizure under the laws of Oklahoma, including certain liquors belonging to the complainants herein. That I called upon the defendants Cain and Waugh, whom I was informed were in possession of said liquors, to deliver said liquors, and they refused to do so, threatening to make forcible resistance. That I finally induced them to consent to my
197 taking possession of said liquors, and thereafter I restored a part of said liquors to the carriers from which they were taken. I am informed that immediately after the same had been restored to the said carriers from which they were taken, they were seized by the defendant Caffey under search warrants sworn out before the Honorable J. J. Beall, another Justice of the Peace in said

county, and are now being held under said search warrant. That when I first called upon said Waugh and Cain to obtain possession of said liquors they informed me that they were instructed by the governor and enforcement attorney Hayes to make armed resistance, if necessary, to my obtaining possession of said liquor.

H. D. GARRISON.

Subscribed and sworn to before me this 25th day of October, 1909.

[SEAL.]

MARY S. HILL,

Notary Public.

My commission expires Nov. 16, 1911.

Endorsed: No. 488. In the U. S. Circuit Court Wm. Swartz and D. Dreeben, partners, Plaintiffs, vs. Chas. N. Haskell, et al., Defendants. Affidavit of H. D. Garrison. Filed Oct. 26, 1909. Harry L. Finley, Clerk.

198 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. 488. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under the Name and Style of The Cooke County Liquor Company, Complainants,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, Defendants.

Affidavit.

F. J. Best, being duly sworn, deposes and says that he is the agent of the Atchison, Topeka & Santa Fe Railway Company at Oklahoma City. Affiant shows that at various times during the months of June, July, August, September, 1909, certain shipments of intoxicating liquors which were consigned by the O. F. Haley Company and The Cooke County Liquor Company of Gainesville, Texas, to various parties in Oklahoma City, aggregating in value over five thousand dollars (\$5000.00) were seized by the defendant Caffey under search warrants issued by William H. Zwick, and other justices of the peace in Oklahoma City while in the possession of the Atchison, Topeka & Santa Fe Railway Company in Oklahoma City for the purpose of being delivered to the consignees, and before the delivery to the consignee and before the surrender of the bill of lading. That on each occasion the said Caffey was accompanied by either the

defendant Waugh, or Fenton, or Cain, or Murdock, and wa
 199 acting under their instructions. That in each instance the
 goods that were seized were shipped to shippers' order, and
 were plainly marked with the names of the consignees thereon. Tha
 after the said Justice of the Peace Zwick had ordered the liquors re
 turned to this Railway Company, and after the sheriff had returned
 part of the goods in accordance with said order, the same were im
 mediately seized by the defendant Caffey under search warrants is
 sued from the Justice of the Peace Beall's court, and same were held
 by said Caffey.

F. J. BEST.

Subscribed and sworn to before me this 25th day of October, 1909
 [SEAL.] MARY S. HILL,

Notary Public.

My commission expires Nov. 16, 1911.

Endorsed: No. 488. In the U. S. Circuit Court. William Swartz
 and D. Dreeben, partners, Plaintiff-, vs. Chas. N. Haskell, et al., De
 fendant-. Affidavit of W. J. Best. Filed Oct. 26, 1910. Harry L.
 Finley, Clerk.

200 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western
 District of Oklahoma.

No. —. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under
 the Name and Style of The Cooke County Liquor Company,
 Complainants,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary
 Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes
 Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J.
 Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W.
 Fenton, William Murdock, and B. J. Waugh, Defendants.

Affidavit.

STATE OF OKLAHOMA,
Oklahoma County:

William H. Zwick, being duly sworn, deposes and says that he
 is the Justice of the Peace before whom certain intoxicating liquors
 in causes Number- 1375-1393-1394-1397-1401-1434-1441-1502 were
 tried, and it appeared from the evidence in each of said causes that
 said liquors had been seized while in the possession of the carriers,
 and before delivery to the consignees. That I found said liquors not
 to be subject to forfeiture, and ordered the same restored to the

carriers from which they were taken. It appeared from the trial of many of causes before me that the search warrants were obtained upon affidavits made by the defendants Fenton, Cain, Waugh and Murdock, and the same were executed mostly by the defendant Caffey, and in many instances they were executed upon goods found in the possession of carriers before the bills of lading were
 201 surrendered, and before delivery to the consignee. I further state that it is my information that immediately upon said goods being restored to the carriers under the orders of my court, the same were seized under search warrants issued out of the court of the J. J. Beall, a purported Justices of the Peace.

WILLIAM H. ZWICK.

Subscribed and sworn to before me this 25th day of October, 1909.

[SEAL.]

H. T. HOWARD,

Notary Public.

My commission expires Dec. 22, 1912.

Endorsed: No. 488. In the U. S. Circuit Court. Wm. Swartz & D. Dreeben, partners, Plaintiffs, vs. Chas. N. Haskell et al., Defendants. Affidavit of Wm. H. Zwick. Filed Oct. 26, 1909. Harry L. Finley, Clerk.

202 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. —. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under the Name and Style of The Cooke County Liquor Company, Complainants,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, Defendants.

Affidavit.

STATE OF OKLAHOMA,
Oklahoma County:

George H. Giddings, being duly sworn, deposes and says that he is one of the attorneys for the complainants herein, and as such he represented them in the hearing before the Honorable William H. Zwick in certain cases pending in said court, wherein certain intoxicating liquors belonging to complainants had been seized while in the possession of certain railway companies in Oklahoma City. That

upon said hearing the State was represented by counsel. That the court, after hearing the evidence, adjudicated the liquors to be not subject to seizure, but to constitute interstate commerce shipments, and ordered that the same be restored to the carriers from which they were taken. That after the sheriff had taken possession of the

203 said liquors under the orders of the said Zwick, and restored part to the carriers from which they were taken, the said liquors which had just been adjudicated not subject to seizure were immediately seized under search warrants issued out of the court of the Honorable J. J. Beall, according to my information and belief. And according to my information and belief they were the same goods that were restored by the said Garrison, Sheriff of Oklahoma county, to the carriers, under the orders of said court. I was informed by John Hayes in the presence of several other parties that it was his instructions from his superiors to immediately seize said liquors as soon as the same were restored to the carriers under the order of Zwick's court.

GEO. H. GIDDINGS.

Subscribed and sworn to before me this 25th day of October, 1909.
[SEAL.] MARY S. HILL,
Notary Public.

My commission expires Nov. 16, 1911.

Endorsed: No. 488. In the U. S. Circuit Court,—Wm. Swartz & D. Dreeben, partners, Plaintiff, vs. Chas. N. Haskell, et al., Defendants. Affidavit of Geo. H. Giddings. Filed Oct. 26, 1909. Harry L. Finley, Clerk.

204 United States Circuit Court, Western District of Oklahoma, Special Guthrie Term, 1909, Tuesday, October 26th, 1909.

488. In Equity.

WM. SWARTZ et al., Complainants,
vs.
CHARLES N. HASKELL et al., Defendants.

Now on this October 26th, 1909, this cause comes on for hearing on the application for a temporary injunction. The Complainants appear by their attorneys, Giddings & Giddings, and the defendants appear by their attorney, Fred S. Caldwell.

Thereupon complainant and defendant introduce affidavits and evidence, and thereafter it is ordered that this cause be continued for further hearing until Thursday, October 28th, 1909, at 10 o'clock A. M. It is further ordered that the complainants have until 12 o'clock tomorrow to serve copies on defendants of their affidavits to be used on the said hearing, and that defendants have until Thursday, October 28th, 1909, to serve copies of their affidavits upon complainants.

205 United States Circuit Court, Western District of Oklahoma,
Special Guthrie Term, 1909, Thursday, October 28th,
1909.

488.

WM. SWARTZ et al., Complainants,

vs.

CHARLES N. HASKELL et al., Defendants.

Now on this October 28th, 1909, this cause comes on for further hearing on the application for a temporary injunction herein. The complainants are present by their attorneys, Giddings & Giddings, and the defendants are present by their attorney, Fred S. Caldwell. Thereupon complainants introduce further evidence and affidavits, and Defendants introduce additional affidavits and thereafter argument of counsel is heard, and at the close of the argument the court reserves its decision herein.

206 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western
District of Oklahoma.

No. —. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under
the Name and Style of The Cooke County Liquor Company,
Complainants,

vs.

CHARLES N. HASKELL et al., Defendants.

Affidavit.

D. Dreeben, being duly sworn, says that he is one of the complainants in the above entitled cause, and a member of the firm of Swartz & Dreeben, doing business under the style of the Cooke County Liquor Company, and that he, personally, has supervision of the shipments and preparation for shipment and packing of the various boxes that are consigned to parties purchasing. And affiant states that it is not true at any time that the complainant herein shipped any liquors to any point in Oklahoma or elsewhere in boxes or packages that have been misbranded or inscribed in any manner for the purpose of deceiving any person as to the contents thereof, or that are calculated to deceive any person as to the contents thereof. That in almost all instances goods are shipped in the original boxes in which they are received by complainants from the distillery, except in cases where they receive small orders for assorted liquors. That for the purpose of meeting such orders

the complainants purchase in large quantities from the various retailers in Gainesville, Texas, second-hand boxes, and in some instances these boxes contain the original inscriptions which were placed thereon when first used, for instance, some boxes might contain the word "Soap," or "Tobacco" or "Tomatoes," or
207 "Shoes," and so forth, as the case may be, but this is in very rare instances and only in the case of small assorted orders, as heretofore set out. That in no instance do the complainants place said inscription upon the boxes, but in all instances the boxes contain the words "Shipped from the Cooke County Liquor Company," or similar words, and in all instances the bills of lading contain an exact description of the kind and character of said goods. That affiants do not intend at any time hereafter to ship any goods with any false brands or inscriptions thereon.

Affiant further says that after Sheriff Garrison received his orders to return the goods seized to the respective carriers that he, in company with other shippers, went to the warehouses in which the said officers had stored said liquors, for the purpose of assisting the said Garrison in identifying the goods in order to return them to the carrier from whom they were taken. That they found the tags and other marks of identification had been obliterated; many cases of whiskey and casks of beer had been broken in two, and their contents taken out, and many thousands of dollars of goods had been commingled together in such a way that it was impossible to identify the goods taken from one depot from the goods taken from another depot, and the only purpose that affiant was present for was to assist the sheriff to determine, insofar as he could, the goods to which each respective carrier was entitled, under the order of the court.

D. DREEBEN.

Subscribed and sworn to before me this 27th day of October, 1909.

[SEAL.]

MARY S. HILL,
Notary Public.

My commission expires Nov. 16, 1911.

209 Service of a copy of this affidavit is hereby acknowledged.
J. M. HAYES.

Attached to said affidavit are the following:

(Here follow copies of statement and bill of lading marked pp. 208 and 208a.)

Santa Fe

R. R. Co.

DUPLICATE

GAINESVILLE, TEXAS, 9/29

1909

RECEIVED FROM

The Cooke County Liquor Company

In Apparent Good Order, the Articles Named Below to be Delivered in Like Good Order Without Unnecessary Delay

MARKED



Shippers Order Milwaukee Supply Co.

Notify Oklahoma City, Okla.

VIA

AS PER CONDITIONS OF COMPANY'S BILL OF LADING

PRINTED BY THE REGISTER JOB DEPARTMENT, GAINESVILLE, TEXAS.

NO.	DESCRIPTION OF PACKAGES	WEIGHT Subject to Correction	RATE Freight per 100 lbs.
	BBLs.		
	1-2 BBLs.		
	KEGS		
5	CASES whiskey		
	CASKS BEER IN BOTTLES		
	CRATES		
	(1740)		

T. J. Sates

AGENT

Gulf, Colorado & Santa Fe Railway Company.

ORDER BILL OF LADING--ORIGINAL:

Shippers No.

Agents No.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading.

at Gainesville, Texas, Sept. 8, 1909 19

from The Cooke County Liquor Co. the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER BILL of lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is indorsed on this original bill of lading or given in writing by the shipper.

The Rate of Freight from

to is in cents per 100 Lbs.

[illegible]

Consigned to ORDER OF.....The Cooke County Liquor Co..

Destination,Oklahoma...City,....Okla.,

State of.....County of.....

NotifyThe Milwaukee Supply Co.,

Oklahoma City, Okla.

State of.....County of.....

Route,	Car Initial
	Car No

[illegible]

Agents No.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading.

at.....Gainesville, Texas, Sept. 8, 1909.....19

from The Cooke County Liquor Co. the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER BILL of lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is indorsed on this original bill of lading or given in writing by the shipper.

The Rate of Freight from

to is in cents per 100 Lbs.

[illegible]

IF Special	per _____
IF Special	per _____

(Mail Address—Not for purposes of Delivery.)

Consigned to ORDER OF...The Cooke County Liquor Co..

Destination,Oklahoma City, Okla.State ofCounty of

NotifyThe Milwaukee Supply Co.,

At Oklahoma City, Okla.

Route, Car Initial.....

NO.	PACKAGES
1	1
2	1
3	1
4	1
5	1
6	1
7	1
8	1
9	1
10	1
11	1
12	1
13	1
14	1
15	1
16	1
17	1
18	1
19	1
20	1
21	1
22	1
23	1
24	1
25	1
26	1
27	1
28	1
29	1
30	1
31	1
32	1
33	1
34	1
35	1
36	1
37	1
38	1
39	1
40	1
41	1
42	1
43	1
44	1
45	1
46	1
47	1
48	1
49	1
50	1
51	1
52	1
53	1
54	1
55	1
56	1
57	1
58	1
59	1
60	1
61	1
62	1
63	1
64	1
65	1
66	1
67	1
68	1
69	1
70	1
71	1
72	1
73	1
74	1
75	1
76	1
77	1
78	1
79	1
80	1
81	1
82	1
83	1
84	1
85	1
86	1
87	1
88	1
89	1
90	1
91	1
92	1
93	1
94	1
95	1
96	1
97	1
98	1
99	1
100	1

DESCRIPTION OF ARTICLES AND SPECIAL MARKS

WEIGHT

CLASS OR RATE	CHECK COLUMN
---------------	--------------

COLUMN

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received \$.....
to apply in prepayment
of the charges on the
property described
hereon.

Agent or Cashier.

Per _____ (The signature here acknowledges only the amount prepaid.)

Charges Advanced:

.....

The Cooke County Liquor Co.....Shipper.

.....T. J. Sates.....Agent.

Per.....

Per.....Z
(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

210 I hereby certify that the 2 copies of bills of lading attached hereto are true & correct copies of 2 original bills of lading, made by me and substituted herein in lieu of original bills of lading per court order of Nov. 15, 1909.

HARRY L. FINLEY, *Clerk*.

Nov. 19, 1909.

Said Affidavit is endorsed: No. 488. William Swartz and D. Dreeben, partners doing business under the name and style of The Cooke County Liquor Company, vs. Charles N. Haskell, et al. Affidavit of D. Dreeben. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

211 In the United States Circuit Court for the Western District of the State of Oklahoma.

WM. SWARTZ and D. DREEBEN, Doing Business as the Cook- County Liquor Co., Complainants,

vs.

CHARLES N. HASKELL, Governor, et al., Defendants.

Affidavit.

George H. Giddings, being duly sworn upon his oath, states that he is one of the solicitors for the complainants in this cause; that since the hearing of this cause this morning in this court he has been informed by telephone certain parties who claim to be Enforcement Officers and who claim to act under the authority of the defendant John Hayes and his superiors, have seized a certain shipment of intoxicating liquors made by these complainants to certain customers in Oklahoma City while the same was in the hands of the carrier and before surrender of the Bill of Lading and delivery to the consignee, and that such seizure was made this morning in violation of the restraining order issued by this court.

GEO. H. GIDDINGS.

Subscribed and sworn to before me this 26th day of October, 1909.

[SEAL.]

HARRY L. FINLEY,

Clerk U. S. Circuit Court, Western District of Oklahoma.

Endorsed: No. 488. U. S. Circuit Court, Western District of Oklahoma. Wm. Swartz et al., Complainants, vs. Charles N. Haskell, Governor, et al., Defendants. Affidavit of Geo. Giddings. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

212 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western
 District of Oklahoma.

No. —. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under
 the Name and Style of The Cooke County Liquor Company
 Complainants,

vs.

CHARLES N. HASKELL et al., Defendants.

Affidavit.

H. D. Garrison, being duly sworn, deposes and says that he is
 the sheriff of Oklahoma county, State of Oklahoma, and that it is
 not true that in any instance when he undertook to take possession
 of the goods that were seized under search warrants that he de-
 livered any of said goods to any bootlegger or any person, or per-
 mitted any person or any bootlegger to have access or possession
 of any of said goods. That when he entered the warehouses in
 which the officers had stored said goods he found that many thou-
 sands of dollars' of the goods had been commingled together
 the marks of identification on many of them torn off, many cask
 broken into and the contents removed, and that it was impossible for
 him to identify the goods of one carrier from the goods of another
 carrier, and in order to assist him to so identify the goods, he per-
 mitted certain of the shippers and certain of the consignees to
 with him to enable him to restore to the respective carriers the
 213 goods that each was entitled to.

H. D. GARRISON.

Subscribed and sworn to before me this 27th day of October
 1909.

[SEAL.]

MARY S. HILL,
Notary Public.

My commission expires Nov. 16, 1911.

I hereby acknowledge service upon me of a copy of this affidavit
 this 27th day of October, 1909.

J. M. HAYES.

Endorsed: No. 488. William Swartz and D. Dreeben. Affidavit
 of H. D. Garrison. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

214 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States.

No. 488.

WM. SWARTZ and D. DREEBEN, Complainants,
vs.
CHAS. N. HASKELL, as Governor, et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
County of Logan, ss:

T. E. Hendricks, of lawful age, being first duly sworn, on oath says:

That he has read the two affidavits of S. W. Fenton made and filed in the above named cause; that he well remembers the occasion referred to in the second affidavit made by the said S. W. Fenton with reference to the execution by H. D. Garrison, Sheriff of Oklahoma County, State of Oklahoma, of the order of William H. Zwick, Justice of the Peace of Oklahoma City Township, Oklahoma County, State of Oklahoma, directing that the intoxicating liquors referred to in the said S. W. Fenton's affidavit be re-delivered to the common carriers in said Oklahoma City, from which said carriers they had been taken upon search and seizure warrants duly issued by the said William H. Zwick, as such Justice of the Peace, prior thereto; that affiant well remembers that the said S. W. Fenton did on said occasion call affiants attention to certain boxes of said intoxicating liquors which were mis-branded and mis-labeled in manner and form stated in the said Fenton's affidavits, to-wit: Branded and labeled, "Bull Durham Tobacco," and "Bartlett Pears."

Affiant further states that he personally examined into one
215 of said packages marked Bartlett Pears and his investigation so made disclosed the fact that said package contained Gin in bottles.

Further affiant saith not.

T. E. HENDRICKS.

Subscribed and sworn to before me this 28th day of October, 1909.

[SEAL.]

F. L. WILLIAMS,
Notary Public.

My comm. exp. March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

216 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States.

No. 488.

WM. SWARTZ and D. DREEBEN, Complainants,
vs.
CHAS. N. HASKELL, as Governor, et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
County of Logan, ss:

S. W. Fenton, of lawful age, being first duly sworn, on oath says:

That he is one of the defendants in the above and foregoing action, and the same S. W. Fenton who made a certain affidavit heretofore filed herein in resistance to the application for a temporary injunction. Affiant further says that in addition to said former affidavit he now makes this further affidavit as supplementary thereto.

Affiant says that on or about the first day of October, 1909, at which time certain intoxicating liquors were taken and seized from the depot of the M., K & T. Ry. Co. at Oklahoma City, Oklahoma County, State of Oklahoma, in manner and form as alleged in affiant's former affidavit, a certain lot of intoxicating liquors were also taken and seized under a search and seizure warrant issued by William H. Zwick, Justice of the Peace of Oklahoma City Township, Oklahoma County, State of Oklahoma, from the depot of the A. T. & S. F. Ry. Co., at said Oklahoma City; that all of said intoxicating liquors were so taken from said M. K. & T. Ry. Co. and said A. T. S. & F. Ry. Co. at said Oklahoma City were by the
217 officers executing said search and seizure warrants placed in storage in a building occupied by the U. S. Loan Company at No. 115 West Grand Avenue in said Oklahoma City, to await the hearing and proceedings on the return of said search and seizure warrants pursuant to Section 6, Article III of Chapter 69 of the Session Laws of 1907-8; that affiant was present at the hearing so had on the returns to said search and seizure warrants and was also present when H. D. Garrison, as Sheriff of Oklahoma County, State of Oklahoma, assumed to execute the order of restitution made and entered in said causes and referred to in complainant's bill; that then and there when the said H. D. Garrison, as such Sheriff, so assumed to execute said order of restitution so made in said matters by the said William H. Zwick, as such Justice of the Peace, a certain person who then and there introduced himself as Mr. Dreeben of the Cooke County Liquor Company of Gainesville, Texas, introduced himself

to affiant and gave affiant his business card, which said business card is in words and figures as follows:

Lemp,
St. Louis.

with
The Cooke County Liquor Company,
Schwartz & Dreeben, Prop's.
Distributors of
Lemp's St. Louis Beer,
Gainesville, Tex.

That at the time the said Dreeben so introduced himself to affiant he informed affiant that his business telephone number in Gainesville Texas was No. 194, which said number affiant then and there wrote down on said business card as a memorandum. That the said Dreeben then and there assumed to represent and act for the said Schwartz and Dreeben with reference to all of said intoxicating liquors so being delivered back by the said H. D. Garrison under and pursuant to said order of restitution so made and entered by the said William H. Zwick, as such Justice of the Peace 218 and which were claimed by the said Schwartz and Dreeben, and that the said Dreeben then and there received from the said H. D. Garrison, as such Sheriff, a large number of boxes of said intoxicating liquors for and on behalf of the said Schwartz & Dreeben.

Affiant further states that at the same time the said H. D. Garrison, as such Sheriff so assumed to execute said order of restitution so made and entered in said search and seizure proceedings by the said Zwick, as such Justice of the Peace with reference to said intoxicating liquors hereinabove referred to, one Dick Hudson then and there appeared and introduced himself to this affiant as the representative of The O. F. Haley Company of Gainesville, Texas, and that he the said Dick Hudson, did then and there, as such representative of the said The O. F. Haley Company, of Gainesville, Texas, receive from the said H. D. Garrison, as such Sheriff, a large number of boxes of said intoxicating liquors; that the said Dick Hudson then and there when he so received from the said H. D. Garrison said boxes of intoxicating liquors, began to remove therefrom, and did in fact remove from a number of said boxes, the tag or card containing the name and address of the consignee and in lieu thereof tacked thereon or attached thereto another card upon which was printed, "O. F. Haley Company, Gainesville, Texas." That the said Dick Hudson so continued to retag said boxes until this affiant intervened and remonstrated on the ground that said order of restitution so being then and there executed by the said H. D. Garrison, as such Sheriff, ordered and directed that said intoxicating liquors be by the said H. D. Garrison, delivered back to the common carrier from whom they had been taken, and that thereupon, upon such intervention on the part of this affiant, the

said Dick Hudson ceased so retaging said boxes of intoxicating liquors.

219 This affiant further says that among said boxes of intoxicating liquors so received by the said Dreeben and the said Dick Hudson from the said H. D. Garrison, as such Sheriff, in manner and form as hereinabove stated, there were a number of boxes which contained no brand or label disclosing the contents of said boxes to be intoxicating liquors, but that on the contrary, number of said boxes were labeled and branded, "Bulldurham Tobacco," "Arm & Hammer Brand Soda," "Bartlett Pears," "Liberty Brand Crackers," "Club House Cheese," etc. Affiant further says that he then and there called the attention of W. D. Turner, T. E. Hendricks and G. S. Peacock to said boxes of said intoxicating liquors which were so mis-branded and labeled.

Further Affiant saith not.

S. W. FENTON.

Subscribed and sworn to before me this 28th day of Oct. 1909.

[SEAL.]

F. L. WILLIAMS,
Notary Public.

My Comm. Exp. March 5, 1910.

Filed Oct. 28, 1909.

HARRY L. FINLEY, Clerk.

220 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States.

No. —.

SWARTZ & DREEBEN, Partners, &c., Complainants,
vs.

CHAS. N. HASKELL, as Governor, et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction

STATE OF OKLAHOMA,
County of Oklahoma, ss:

R. A. Young, being first duly sworn, on oath says:

That he is a special officer of the city of Oklahoma, County of Oklahoma, State of Oklahoma. That he was present at a car of the Atchison, Topeka and Santa Fe Railroad, in the yards of said railroad company, at Oklahoma City, Oklahoma, the day that H. D. Garrison, as Sheriff of Oklahoma County, returned to the railroad company, under an alleged returning order from the court of William H. Zwick, certain liquors.

That affiant saw parties, who are strangers to him, enter the car and proceed to take possession of said liquor, so returned by the said Harvey D. Garrison, Sheriff.

Affiant further says that he heard S. W. Fenton, remonstrate with the men against taking possession of said goods, claiming that the order of the sheriff was to return the goods to the railroad company, or carriers, and not to any individual or firms.

Affiant further says that he saw one of these men above mentioned, tear off the tags or labels that were on the boxes of liquor and placed thereon, O. F. Haley & Co. tags.

221 Affiant further says that a number of the boxes in said car, which contained intoxicating liquors, contained no brand or label disclosing the contents of said box to be intoxicating liquors, but on the contrary a number of said boxes were labeled and branded "Bull Durham Tobacco," "Tomatoes," "Arm & Hammer Brand Soda," "Bartlett Pears," "Liberty Brand Crackers," "Club House Cheese," etc.

Affiant further says that these same boxes, heretofore mentioned, were re-taken by the state officers and placed in the warehouse at #5 West Main St., Oklahoma City, Oklahoma. That he saw some of the misbranded boxes heretofore mentioned, opened. Some of the said boxes contained wine, gin and whisky, and further affiant says not.

R. A. YOUNG.

Subscribed and sworn to before me this 27th day of Oct. 1909.

[SEAL.]

R. WEESNER, *Notary Public*.

My Commission expires Jan'y 25th, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

222 UNITED STATES OF AMERICA,

State of Oklahoma, Western District, ss:

In the Circuit Court of the United States.

No. 488.

WM. SWARTZ & D. DREEBEN, Partners, Complainant-,

vs.

CHAS. N. HASKELL, as Governor, et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,

County of Logan, ss:

J. M. Hays, being duly sworn upon his oath, states in reply to an affidavit of George H. Giddings, one of the solicitors of the complainants in the above entitled cause, that he, affiant, went to Oklahoma City on the evening of October 26, 1909, and made a thorough examination with reference to the truth or falsity of the report, as testified to in the affidavit of the said George H. Giddings.

Affiant says that he learns from employees that there were four cases of whisky seized on October 26, 1909; three of said cases of

whisky being seized by Policeman Young from a dray, while in an alley delivering said liquor to a bootlegging establishment; the other case of whisky being seized by special officer Peacock, from a dray while being carried to a bootlegging establishment.

Affiant further says that he is informed and believes, and so states the fact to be, that the rumor is absolutely false in regard to the seizure of a certain shipment of intoxicating liquors, made by these complainants to certain consumers in Oklahoma City, while the same was in the hands of the carrier, and before the
223 surrender of the bill of lading, and delivered to the consignee.

J. M. HAYES.

Subscribed and sworn to before me this 27th day of Oct. 1909.
[SEAL.] F. L. WILLIAMS, *Notary Public*.

My commission expires March 5, 1910.

GIDDINGS & GIDDINGS.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

224 UNITED STATES OF AMERICA,
Western District —, ss:

In the Circuit Court of the United States Within and for said District.

No. 488.

WM. SWARTZ & D. DREEBEN, Partners, Complainant,
vs.
CHAS. N. HASKELL et al., Defendants.

Affidavit in Resistance for Temporary Injunction.

STATE OF OKLAHOMA,
Logan County, ss:

J. M. Hayes, being first duly sworn on oath states that the Milwaukee supply Company, of Oklahoma City, Oklahoma has a whole-sale liquor dealers' license and a retail liquor dealers' license as shown by the record ten on page 158, of the internal revenue collectors record at Leavenworth Kansas the following is copy of said record ten page 158, Milwaukee Supply Company, N. Melton and L. Smith W. L. D. Oklahoma City July, 1909, date of payment August 7th, 1909, stamp No. 402 location of business, S. Fe. On page 158, Milwaukee Supply Company R. L. D. Oklahoma City July 25th, Amount of taxes \$25, date of payment of taxes August 7th, 1909, No. of stamp 18601, location of business, S. Fe. Claimant further says that on page 72 of record ten of the Internal Revenue office the St. Louis Supply Company, N. Edlestein and O. S. Jones, W. L. D. Oklahoma City, July, 1909, amount of tax \$100, date of payment

August 2, 1909, No. of tax 400, location of business, S. Fe. On page 72 of same Company has a R. L. D. tax for which they paid \$25 on August 2, 1909. No. of said tax being 18504, and location of business S. Fe.

J. M. HAYES.

Subscribed and sworn to before me this 26 day of October, 1909.

[SEAL.]

F. L. WILLIAMS,

Notary Public.

My com. ex- March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

225 UNITED STATES OF AMERICA,

State of Oklahoma, Western District, ss:

In the Circuit Court of the United States.

No. 488.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under the Name and Style of The Cooke County Liquor Company, Complainants,

vs.

CHAS. N. HASKELL et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,

Logan County, ss:

G. F. Caffey of lawful age, being first duly sworn on oath, says that affiant is one of the defendants in the above and foregoing action, and that he is a regularly elected Constable for Oklahoma City, Oklahoma County, Oklahoma.

Affiant further says that he never has threatened or in any manner declared or indicated an intention on his part to take and seize or cause to be taken and seized, any liquor shipped into the State of Oklahoma by complainant, or any other person in manner and form as alleged in complainants' bill, except by due process of law, under a search and seizure warrant, issued by some Justice of the Peace or other judicial officer of the State of Oklahoma upon proper complaint, and after such Justice of the Peace or other judicial officer of the State of Oklahoma has found reasonable grounds to exist for the issuance of such warrant and that affiant does not now intend or propose, or never has intended or proposed, and does not expect that he ever will intend or propose to proceed in such matters other than according to the orderly and legal manner, provided by Sections 5 and 6, Article 3, Chapter 69 of the Session laws of 1907-8 of the State of Oklahoma.

G. F. CAFFEY.

Subscribed and sworn to before me this 26th day of Oct. 1909.
[SEAL.] F. L. WILLIAMS,

Notary Public.

My comm. exp. March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

227 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States.

No. 488.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under
the Name and Style of The Cooke County Liquor Company,
Complainants,

vs.

CHAS. N. HASKELL et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
Logan County, ss:

F. F. Cain, of lawful age, being first duly sworn on oath says:

That affiant is one of the defendants in the above and foregoing action, that on or about the 27th day of September, 1909, he was in Oklahoma City, Oklahoma county, State of Oklahoma, and has personal knowledge of the execution of a search and seizure warrant issued by Wm. H. Zwick, Justice of the peace, within and for Oklahoma City, Oklahoma county, State of Oklahoma, in a certain cause then and there brought and pending before the said Wm. H. Zwick, as such Justice of the Peace under and by virtue of sections 5 and 6, Article 3, and chapter 69 of the Session Laws of 1907-8.

Affiant further says that to his own personal knowledge, all of the liquors referred to in complainants' bill, that were taken and seized at Oklahoma City, Oklahoma county, State of Oklahoma, were taken and seized by an officer, De Jure, under the laws of the State of Oklahoma, upon and by virtue of a search and seizure warrant issued by a Justice of the Peace, or other judicial officer of the State of Oklahoma under and pursuant to Section- 5 and 6, Article 3, Chapter 69 of the Session Laws of 1907-8.

228 Affiant further says that he never has threatened or in any manner declared or indicated an intention on his part to take and seize or cause to be taken and seized, any liquor shipped into the State of Oklahoma by complainant-, or any other person in manner and form as alleged in complainants' bill, except by due process of law, under a search and seizure warrant, issued by some Justice of the Peace or other judicial officer of the State of Oklahoma has found

reasonable grounds to exist for the issuance of such warrant; and that affiant does not now intend or propose, and never has intended or proposed, and does not expect that he ever will intend or propose to proceed in such matters other than according to the orderly and legal manner, provided by said sections 5 and 6, Article 3, Chapter 69, of the Session Laws of 1907-8 of the State of Oklahoma.

F. F. CAIN.

Subscribed and sworn to before me this 26th day of Oct. 1909.
[SEAL.] F. L. WILLIAMS,

Notary Public.

My comm. exp. March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

229 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States.

No. 488.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under
the Name and Style of The Cooke County Liquor Company, Com-
plainants,

vs.

CHAS. N. HASKELL et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
County of Logan, ss:

S. W. Stone, of lawful age, being first duly sworn on oath says that affiant is one of the defendants in the above and foregoing action; affiant says that he is the Superintendent of the State Agency of the State of Oklahoma, located at Guthrie, Oklahoma; affiant says that it is not true as alleged in complainant's bill of complaint that he is without bond, but instead thereof affiant says that he is under a bond of Twenty Five Thousand Dollars, for the faithful performance of his duties.

Affiant further says that he never has threatened or in any manner declared or indicated an intention on his part to take and seize or cause to be taken and seized any liquors shipped into the State of Oklahoma by complainant, or any other person, in manner and form as alleged in complainant's bill, except by due process of law, under a search and seizure warrant issued by some Justice of the Peace or other judicial officer of the State of Oklahoma upon proper complaint, and after such Justice of the Peace or other judicial officer of the State of Oklahoma has found reasonable
230 grounds to exist for the issuance of such warrant and that
affiant does not now intend or propose, or never has intended

or proposed, and does not expect that he ever will intend or propose to proceed in such matters other than according to the orderly and legal manner provided by Sections 5 and 6, Article 3, Chapter 69 of the Session Laws of 1907-8 of the State of Oklahoma.

S. W. STONE.

Subscribed and sworn to before me this 26th day of Oct. 1909.

[SEAL.]

F. L. WILLIAMS,
Notary Public.

My comm. exp. March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

231 UNITED STATES OF AMERICA,
State of Oklahoma, ss:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. 488. In Equity.

WILLIAM SWARTZ et al., Complainants,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Defendants.

Affidavit.

STATE OF OKLAHOMA,
County of Logan, ss:

J. M. Hayes being duly sworn on oath, states, that he is assistant counsel to the Governor of the State of Oklahoma; that he appeared by his employed assistant, Lee F. Wilson in the trials of cases No. 1375, 1393, 1394, 1401, 1434, 1441 and 1502 before one Wm. H. Zwick, an acting Justice of the Peace in and for Oklahoma City T. P. Oklahoma county, Oklahoma.

That affiant caused to be filed at the rendition of the judgment in the above entitled cases a notice of appeal as provided by the statutes of the State of Oklahoma, and appeared in person before said W. H. Zwick and presented thoughts and arguments on the right of the State to appeal from the decisions of the said Wm. H. Zwick; that it was the judgment of the court that the State was entitled to an appeal to the county court of said Oklahoma county,

232 State of Oklahoma; that the said plaintiff, the State of Oklahoma, would be required to give bonds; that at the time that the said Wm. H. Zwick rendered said opinion he at the request of George H. Gidings, who claimed to represent the impleaders in said cases above mentioned and who are complainants

in this case; that he the said Wm. H. Zwick issued an order, a written order direct to H. D. Garrison, Sheriff of Oklahoma county, State of Oklahoma, to take the liquors seized and adjudicated in the above numbered cases, and turned said liquors over to the common carriers;

Affiant further says that he then and there entered his objections to said order by the said Wm. H. Zwick, as the same was contrary to law, as the Statutes of the State of Oklahoma permits the party desiring an appeal, ten days in which to perfect the same.

Affiant further says that the sheriff of Oklahoma county did take portions of said liquors over the protests of the affiant and the officers who had charge of said liquors and that he the sheriff delivered the liquors and returned the same to the carriers; that a part of said liquors was taken in charge of by claimant; that affiant was informed and believes the fact to be that various parties were present when said goods were delivered to the carrier by said sheriff, ready to distribute said liquors to the various bootlegging joints in the City of Oklahoma, and State of Oklahoma, contrary to the statutes of the State of Oklahoma.

Affiant says that upon receiving said notice and information that he O. K'd and provided a complaint, and that he is informed and believes a search and seizure warrant was issued, and said goods again seized by the officers serving said search and seizure warrant.

J. M. HAYES.

Subscribed and sworn to before me this 26th day of October, 1909.

[SEAL.]

F. L. WILLIAMS,

Notary Public.

My commission expires March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

233 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States.

No. 488.

WILLIAM SWARTZ et al., Complainant,

v.

CHAS. N. HASKELL et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
Logan County, ss:

G. F. Caffey, being first duly sworn states; that he is one of the defendants in the above and foregoing action, and that he is a regularly elected constable for Oklahoma City, Oklahoma county, Oklahoma.

Affiant further says that he never received a search and seizure warrant on the M. K. & T. Railroad freight house or on any firm, corporation or individual until September 20th, 1909; that he never during the months of June, July, August and up to September 20, 1909, received any writs, search and seizure writs of any kind on the M. K. & T. Ry. Co.

Affiant further says that according to his best knowledge and belief that the first seizure was on or about September 28th, 1909; that he made said seizure in compliance with an order from the Justice of the Peace Court of Wm. H. Zwick.

Affiant further says that he has never threatened or in any manner declared or indicated an intention on his part to take and seize or cause to be taken and seized any liquor shipped into the State of Oklahoma by complainant, or any other person in manner and form as alleged in complainant's bill, except by due process of law under a search and seizure warrant issued by some Justice of the Peace or judicial officer of the State of Oklahoma, upon proper complaint and after such Justice of the Peace, or such judicial officer of the State of Oklahoma, has found reasonable grounds existing for the issuance of such warrant, and that affiant does not now intend, or propose, or never has intended or proposed, and does not expect that he ever will intend or propose that he will proceed in such matters other than according to the ordinary and legal manner provided by Sections 5 and 6 of Article III, Chapter 69 of the Session Laws of 1907-8 of the State of Oklahoma.

G. F. CAFFEY.

Subscribed and sworn to before me this 26th day of Oct. 1909.

F. L. WILLIAMS,

Notary Public.

[SEAL.]

My comm. exp. March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

235 UNITED STATES OF AMERICA,
State of Oklahoma, Western District:

In the Circuit Court of the United States within and for said District.

No. 488.

WILLIAM SWARTZ et al., Complainants,
vs.

CHAS. N. HASKELL et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
Logan County, ss:

Wm. Murdock, of lawful age, being first duly sworn on oath says that he has participated as an employee, in the seizure of liquors

from the Missouri, Kansas & Texas Railway Company at Oklahoma City; that the first time said seizure was made of which affiant took part was on October 1, 1909; that the following is a copy of a list of liquors and the parties to whom said liquors were consigned, given affiant by C. L. McGuire, Freight Agent of the Missouri, Kansas & Texas Railway Company, at Oklahoma City:

Taken from M. K. & T. Freight House Oct. 1, 1909.

One barrel of beer marked T. J. Davies 313 West 5th Okla. City.

One barrel of beer marked Fred Perry 727 West Calif. Okla. City.

Five boxes of whiskey F. C. Herneman, Oklahoma City.

Four boxes of whiskey marked Jim Henly, Oklahoma City.

Three cases of green river whiskey marked Milwaukee Supply Co. City.

Eighteen cases of Old Prentice marked Ned J. Milton, city.

Thirty-nine cases of Log Cabin marked St. Louis Supply Co. City.

One barrel of Blue Ribbon beer marked Milwaukee Supply Co. City.

Two boxes of whiskey marked S/O Nfy Abe Jackson, Oklahoma City.

One box of whiskey marked St. Louis Supply Co. City.

twenty four cases M&M whiskey marked S/O Nft. Okla. Distb. Co. City.

Twenty one cases Whiskey marked S/O Nfy St. Louis Supply Co. City.

Five cases Old Crow whiskey marked Holloway-McCarty, City.

Ten cases of Whiskey marked Holloway-McCarty, City.

Two cases of wine marked H. Horman, Oklahoma City.

Two cases of whiskey marked S/O Nfy U. S. Clements, Okla. City.

Two cases of whiskey marked S/O Nfy C. Stivers, Oklahoma City.

Two cases of whiskey marked S/O Nfy John Ashby, Oklahoma City.

236 Two cases of whiskey marked S/O Nfy Bob Conway, Oklahoma City.

Two cases of whiskey marked S/O Nfy C. Vogel, Oklahoma City.

Four cases of whiskey marked S/O Nfy Lewis McHenry, Okla. City.

Eight Bbls. of whiskey marked S/O Nfy Milwaukee Supply Co. City.

Affiant further states that the foregoing list of consignees as above set forth are all or nearly all know- as dealers and dispensers of intoxicating liquors in violation of Chapter 69 of the revised Statutes of the State of Oklahoma and are known and reputed to be bootleggers and wholesale bootleggers in the City of Oklahoma City, Oklahoma County, and State of Oklahoma. Affiant further says that certain persons whose business and occupation is that of draymen in the City of Oklahoma, County of Oklahoma, and State of Oklahoma, have and do receive goods for the above parties upon order issued by parties as contained in the list set forth in this

affidavit, and thereupon receipt for the same, in their own or fictitious names.

Affiant further says that on October 1, 1909, and prior thereto that the said Missouri, Kansas & Texas Railway Company through their agent C. L. McGuire at Oklahoma City, has colluded with the above consignees to secrete and hide from the view of the officers aforesaid shipments and permitted draymen to enter cars and take therefrom liquors so shipped at unseemingly hours at night for the express purpose of assisting said draymen to deliver said liquors contrary to the Statutes of the State of Oklahoma.

WM. MURDOCK.

Subscribed and sworn to before me this 26th day of October, 1909.

F. L. WILLIAMS,
Notary Public.

[SEAL.]

My commission expires March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

237 UNITED STATES OF AMERICA,
State of Oklahoma, Western District:

In the Circuit Court of the United States in and for said District.

No. 488.

WILLIAM SWARTZ et al., Complainants,
vs.
CHAS. N. HASKELL et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
Logan County, ss:

S. W. Fenton, of lawful age, being first duly sworn on oath says that he has participated as an employee, in the seizures of liquors from the Missouri, Kansas & Texas Railway Company at Oklahoma City; that the first time said seizure was made of which affiant took part was on October 1, 1909; that the following is a copy of a list of the liquors and the parties to whom said liquors were consigned, given affiant by C. L. McGuire, Freight Agent of the Missouri, Kansas & Texas Railway Company, at Oklahoma City:

Taken from M. K. & T. Freight House Oct. 1, 1909.

One barrel of beer marked T. J. Davies #313 West 5th-st., Okla. City.

One barrel of beer marked Fred Petry #727 West Calif. Okla. City.

Five boxes of whiskey marked F. C. Herneman, Oklahoma City.

Four boxes of whiskey marked Jim Henly, Oklahoma City.

Three cases of green river whiskey marked Milwaukee Supply Co. City.

Eighteen cases of Old Prentice marked Ned J. Milton, City.

Thirty-nine cases of Log Cabin marked S. Louis Supply Co. City.

One barrel of Blue Ribbon beer marked Milwaukee Supply Co. City.

Two boxes of whiskey marked S/O Nfy Abe Jackson, Oklahoma City.

One box of whiskey marked St. Louis Supply Co. City.

Twenty-four cases M&M whiskey marked S/O Nfy Okla. Distb. Co. City.

Twenty-one cases whiskey marked S/O Nfy St. Louis Supply Co. City.

Five cases Old Crow Whiskey marked Holloway-McCarty, City.

Ten cases of whiskey marked Holloway-McCarty, City.

Two cases of wine marked H. Horman, Oklahoma City.

237½ Two cases of whiskey marked S/O Nfy U. S. Clements, Okla. City.

Two cases of whiskey marked S/O Nfy C. Stivers, Oklahoma City.

Two cases of whiskey marked S/O Nfy John Ashby, Okla. City.

Two cases of whiskey marked S/O Nfy Bob Conway, Oklahoma City.

Two cases of whiskey marked S/O Nfy C. Vogel, Oklahoma City.

Four cases of whiskey marked S/O Nfy Lewis McHenry, Oklahoma City.

Eight bbls. of whiskey marked S/O Nfy Milwaukee Supply Co. City.

Affiant further states that the foregoing list of consignees as above set forth are all or nearly all known as dealers and dispensers of intoxicating liquors in violation of Chapter 69 of the revised Statutes of the State of Oklahoma and are known and are reputed to be bootleggers and wholesale bootleggers in the city of Oklahoma, County of Oklahoma, and State of Oklahoma. Affiant further says that certain persons whose business and occupation is that of draymen in the City of Oklahoma, County of Oklahoma, and State of Oklahoma, have and do receive goods for the above parties upon order issued by parties as contained in the list set forth in this affidavit, and thereupon receipt for the same, in their own or fictitious names.

Affiant further says that on October 1-1909 and prior thereto that the said Missouri, Kansas & Texas Railway Company through their Agent C. L. McGuire at Oklahoma City has colluded with the above consignees to secrete and hide from the view of the officers aforesaid shipments and permitted draymen to enter cars and take therefrom liquors so shipped at unseemingly hours at night for the express purpose of assisting said draymen to deliver said liquors contrary to the Statute of the State of Oklahoma.

S. W. FENTON.

Subscribed and sworn to before me this 26th day of October, 1909.

[SEAL.]

F. L. WILLIAMS,
Notary Public.

My commission expires March 5, 1910.

Filed Oct 28, 1909. Harry L. Finley, Clerk.

Endorsed: No. 488/ U. S. of America, State of Oklahoma Western District, ss: In the Circuit Court of the United States. William Swartz et al., v. Chas. N. Haskell, et al. Affidavits in Resistance to Application for Temporary Injunction. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

238 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States Within and for Said District.

No. 488. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under the Name and Style of The Cooke County Liquor Company, Complainants,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Defendants.

Appearance of Fred S. Caldwell as Attorney Pro Se and Other Defendants.

To Harry L. Finley, Clerk of the Honorable Circuit Court of the United States, within and for the Western District of Oklahoma:

You will please enter my appearance as attorney of record for all of the defendants in the above named cause.

FRED S. CALDWELL,
Counsel to the Governor.

Endorsed: No. 488. U. S. of America, State of Oklahoma, Western District. Wm. Swartz, et al., vs. C. N. Haskell et al. Appearance of Fred S. Caldwell as attorney Pro Se and other Defendants. Filed Nov. 1, 1909. Harry L. Finley, Clerk.

239 United States Circuit Court, Western District of Oklahoma,
Special Guthrie Term, 1909, Thursday, November 4th,
1909.

488.

WM. SWARTZ et al., Complainants,
vs.
C. N. HASKELL et al., Defendants.

Now on this November 4th, 1909, this cause comes on for hearing upon the Application for a temporary injunction.

The complainants appear by their attorneys, Giddings & Giddings. The defendants are present by Fred S. Caldwell, their attorney.

Thereupon argument of counsel is heard upon the said application for a temporary injunction, and the court being fully advised, it is ordered, that the said application of complainant for a temporary injunction, be and the same is hereby denied, without prejudice to filing another application for a temporary injunction herein. It is further ordered that complainant have leave to file an amended bill herein.

240 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western
District of Oklahoma,

No. 488. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners, Doing Business
under the Name and Style of The Cooke County Liquor Company,
Complainant,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Defendants.

Amended Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States
for the Western District of the State of Oklahoma:

Comes now William Swartz and D. Dreeben, partners doing business under the name and style of the Cooke County Liquor Company and citizens and inhabitants of the United States and of the State of Texas, residing at Gainesville in the said state of Texas, and by leave of the Court amends their Original Bill of Complaint against Charles N. Haskell, S. W. Fenton, Fred S. Caldwell, John

Subscribed and sworn to before me this 26th day of October, 1909.

[SEAL.]

F. L. WILLIAMS,
Notary Public.

My commission expires March 5, 1910.

Filed Oct 28, 1909. Harry L. Finley, Clerk.

Endorsed: No. 488/ U. S. of America, State of Oklahoma Western District, ss: In the Circuit Court of the United States. William Swartz et al., v. Chas. N. Haskell, et al. Affidavits in Resistance to Application for Temporary Injunction. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

238 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States Within and for Said District.

No. 488. In Equity.

WILLIAM SWARTZ and D. DREBEN, Partners Doing Business under the Name and Style of The Cooke County Liquor Company, Complainants,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Defendants.

Appearance of Fred S. Caldwell as Attorney Pro Se and Other Defendants.

To Harry L. Finley, Clerk of the Honorable Circuit Court of the United States, within and for the Western District of Oklahoma

You will please enter my appearance as attorney of record for all of the defendants in the above named cause.

FRED S. CALDWELL,
Counsel to the Governor.

Endorsed: No. 488. U. S. of America, State of Oklahoma, Western District. Wm. Swartz, et al., vs. C. N. Haskell et al. Appearance of Fred S. Caldwell as attorney Pro Se and other Defendants. Filed Nov. 1, 1909. Harry L. Finley, Clerk.

239 United States Circuit Court, Western District of Oklahoma,
Special Guthrie Term, 1909, Thursday, November 4th,
1909.

488.

WM. SWARTZ et al., Complainants,
vs.
C. N. HASKELL et al., Defendants.

Now on this November 4th, 1909, this cause comes on for hearing upon the Application for a temporary injunction.

The complainants appear by their attorneys, Giddings & Giddings. The defendants are present by Fred S. Caldwell, their attorney.

Thereupon argument of counsel is heard upon the said application for a temporary injunction, and the court being fully advised, it is ordered, that the said application of complainant for a temporary injunction, be and the same is hereby denied, without prejudice to filing another application for a temporary injunction herein. It is further ordered that complainant have leave to file an amended bill herein.

240 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western
District of Oklahoma.

No. 488. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners, Doing Business
under the Name and Style of The Cooke County Liquor Company,
Complainant,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Defendants.

Amended Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States
for the Western District of the State of Oklahoma:

Comes now William Swartz and D. Dreeben, partners doing business under the name and style of the Cooke County Liquor Company and citizens and inhabitants of the United States and of the State of Texas, residing at Gainesville in the said state of Texas, and by leave of the Court amends their Original Bill of Complaint against Charles N. Haskell, S. W. Fenton, Fred S. Caldwell, John

Hayes, G. F. Caffey, W. J. Garrett, John Queenan, S. W. Fenton, F. F. Cain, William Murdock and B. J. Waugh, defendants above named, and occupying the official positions hereinafter more fully set forth, all of whom are citizens, residents and inhabitants of the State of Oklahoma in the Western District thereof, and complain of said defendants and say:

1.

241 That your orator is engaged in business as dealer in alcoholic and intoxicating liquors, and has its office and place of business in the city of Gainesville, County of Cooke, and State of Texas, and that they have built up and now enjoy a large and lucrative business in the sale of such liquors in the State of Texas, and a part of their business consists, in a large part, in the sale of liquors in the State of Texas, to customers residing outside of the State of Texas, including customers of the State of Oklahoma. That its principal method and custom of making shipments into various places, including the State of Oklahoma, is to receive mail orders for said shipments direct from their customers outside of the State for sales of liquors to be made in Texas, and after said orders are accepted by your orator to deliver said liquors to the Gulf, Colorado & Santa Fe Railway Company, The Atchison, Topeka & Santa Fe Railway Company, the Missouri, Kansas & Texas Railway Company, and the Wells Fargo & Company's Express and other common carriers at Gainesville, the shipping point in said State of Texas for transportation from said point to the various points in the State of Oklahoma where said customers reside, the said common carriers agreeing to transport said liquors by interstate shipment from Gainesville to said points in Oklahoma, and there to deliver to said customers in Oklahoma the said liquors. And in all cases wherein said liquors are shipped, as aforesaid, from said point in Texas to Oklahoma the sales are made outside the state of Oklahoma to be delivered to the consignees in the State of Oklahoma by the carrier aforesaid.

Your orator further shows that their custom is, after delivering the said liquors to the railways and express companies for shipment, as aforesaid, to said point in the State of Oklahoma, to receive from the carrier a bill of lading, which bill of lading is generally made out in the following form, and to forward said
242 bill of lading to some bank or responsible person to be delivered to the purchaser upon payment of a draft for the purchase price which is attached to said bill of lading, the bill of lading generally used being in substance and form about as follows:

"Received — in apparent good order, the following orders marked — to be delivered in like good order. Gainesville, Texas, —. By — Railway. To Shipper's order. Notify —. Marks —. No. —. Article, —. Freight prepaid."

The railway company or other carrier filling in the blanks so as to agree with the dates, names of purchaser, character of goods and the name of the consignee to be notified as they are shown,

and that the custom and understanding between the parties to said transaction is that it gives to the shipper the right to stop said goods at any time before the said goods are delivered to the said purchasers at their destination in Oklahoma, and before the surrender of the bill of lading and the said goods are not delivered to the said purchaser or consignee until they arrive at their said destination and are delivered to the consignees upon the production and surrender of said bill of lading. Each box is plainly marked thereon with the name and address of the consignees.

Your orator further shows that at this time complainants have many orders for said goods to be sold in Texas and shipped by carrier, as aforesaid, to Oklahoma, at various points therein, to be delivered there to the consignees in the manner and form hereinbefore set out, and their legitimate profits on said sales so made in Texas for shipments to be made by them in to the State of Oklahoma will be largely in excess of five thousand dollars (\$5,000.00), and they have accepted said orders and expect in the proper and legitimate exercise of its right to engage in commerce with the citizens of Oklahoma to continue said business and their said profits, and to continue to accept orders at their said Office in Gainesville

for sales in Texas and deliveries in Oklahoma, as aforesaid.
243 and that they are not participating in any unlawful sale of intoxicating liquors in the State of Oklahoma, but are only engaged in their said legitimate business of engaging in interstate commerce, as aforesaid, and said goods are not shipped for the purpose of being used for any unlawful purpose or for the purpose of being bartered, sold or given away in the state of Oklahoma.

II.

Your orator further shows that the defendant Charles N. Haskell is the duly qualified and elected governor of the state of Oklahoma, and as such he is the head of the executive department of said State. That the defendant Caldwell is the duly appointed counsel to the governor. That the defendant, John Hayes, is the duly appointed assistant counsel to the governor; that the defendants Caffey, Garrett and Queenan are duly elected and qualified constables in Oklahoma City in Oklahoma in said State; that the defendant Stone, is the duly appointed dispensary agent for the State of Oklahoma; and the defendants Waugh, Fenton and Murdock and Cain all are claiming to be some kind of state officer employed by the defendants Haskell, Stone, Caldwell and Hayes, and acting under and pursuant to their direction, control and supervision in the commission of the wrongs and trespasses hereinafter more fully set out. That said Haskell, Stone, Caldwell and Hayes, claiming to be enforcing the provisions of a certain act of the legislature of the State of Oklahoma, known as the "Billups Bill," and otherwise known as the "Enforcing Act," which alleged bill has for its object, or claims to have for its object the prohibition of the bartering, selling or giving away of intoxicating liquors in the State of Oklahoma and the enforcement of same, have instructed the other defendants herein, and many other and numerous parties whose

names are unknown to these complainants, that all shipments of intoxicating liquors made in the manner and form hereinbefore set out are illegal and in violation of said Enforcing Act and that said alleged act of the Oklahoma legislature prohibiting the bartering, selling or giving away of intoxicating liquors applies to and included within its provisions all shipments of liquor which are known as interstate shipments while same are still in the hands of the carrier for transportation and delivery before surrender of the bill of lading and delivery to the consignees and made in the manner and form hereinbefore set out; and said Haskell, Stone, Caldwell and Hayes, and their other agents, acting under their instructions, directions and orders, have ordered, authorized and directed said Waugh, Cain, Fenton, Murdock, and numerous others whose names are unknown to complainant, to seize and confiscate and appropriate to their own use and to the use of the State of Oklahoma all liquors so shipped by complainants in the manner and form hereinbefore set out while the same are in the hands of the railway companies in the State of Oklahoma, and before delivery to the consignees as aforesaid, and while in course of transportation, as aforesaid, whereby it is their purpose and intention to deprive complainant of the possession and value of said goods, and prevent them from engaging further in the business of making interstate shipments, as hereinbefore described.

III.

That heretofore, and on divers dates and occasions during the months of June, July, August, September, and October, 1909, complainants, pursuant to their said method of doing business as aforesaid, and following out their right to engage in legitimate interstate commerce with the citizens of Oklahoma did ship from the State of Texas to many parties residing in Oklahoma, at various points, and especially in Oklahoma City, certain intoxicating liquors, consisting of wine, whiskey, beer, etc. aggregating in value over two thousand dollars (\$2000.00). That said shipments were made upon orders received and accepted in Texas, and said liquors were sold in Texas, and delivered in said state of Texas to the Gulf, Colorado & Santa Fe Railway Company, the Missouri, Kansas & Texas Railway Company, and the Wells Fargo & Company Express, and other carriers for transportation and delivery to said Oklahoma City and other points in Oklahoma, and that while said liquors which were so intended for said purchasers in Oklahoma City was in the course of transportation and in the hands of said carriers in Oklahoma City and before consummation of the said interstate shipment, by surrender to consignees of said bill of lading, the said defendants Caffey, Queenan, Garrett and others acting under the immediate instructions, directions and control of the defendants Hayes, Waugh, Fenton, Cain and Murdock, and of other parties whose names are unknown, acting under the control of said defendants above named, and all of said parties, acting under the direction and control of the defendants Haskell, Stone and Caldwell, and claiming to act under and by virtue of

search warrants issued out of the Justice Court of Oklahoma County by one William H. Zwick, Justice of the Peace, did seize all of said liquors that were then in the hands of said carriers, and by force and arms did deprive the said carrier of the possession thereof, with the intent to permanently appropriate the same to the use of the said defendants, and for the use of the State of Oklahoma, and did publicly assert their intention to permanently confiscate the said liquors and all of said defendants pursuant to an understanding between them to prevent these complainants from carrying on their said legitimate business of making interstate shipments from the State of Texas to the State of Oklahoma, as aforesaid, have
 246 threatened, and do intend to carry out said threats, and do openly assert it to be their intention, to seize and confiscate all liquors which this claimant intend- hereafter to make in the manner and form set out, while the same are in the hands of common carriers and constitute a part of an interstate shipment of liquors, in course of transportation, and before delivery to the consignees.

IV.

Your orator further show- that the alleged and pretended search warrants which were so issued by the Honorable William H. Zwick, Justice of the Peace, as aforesaid, were issued, or claimed to be issued pursuant to the provisions of the prohibition act of Oklahoma known as the Billups Bill, as aforesaid, but that the said Billups Bill has no application to the shipments so made by the complainant and intended hereafter to be made by them because the provisions of the said Billups Bill in so far as the same is applied or intended to be applied to interstate commerce shipments are unconstitutional and void and of no effect. And your orators further show that said Billups Bill, under which defendants claim to be acting, even if the same were valid and applied to shipments of the character hereinbefore set out, furnishes no adequate protection to complainants whatever, either as to the goods which have already been wrongfully seized by the defendants, and which are now in the possession under said wrongful seizures, or as to the goods which these complainants intend to ship, and which the said defendants intend to seize as hereinbefore set out. That after said defendants had wrongfully seized said goods as aforesaid under said pretended search warrants, the complainants, seeking to protect themselves appeared before the Honorable William H. Zwick, Justice of the Peace, upon the day upon which said cause was set for trial, and upon the day upon which the cause as to the status of the goods
 247 so seized were to be adjudicated, and on said hearing said William H. Zwick, after hearing the evidence, and after hearing counsel for said defendants purporting to represent the State of Oklahoma, and counsel for these complainants, adjudicated that said liquors were not subject to seizure and confiscation under the laws of Oklahoma, and that the same were interstate commerce shipments, and ordered that said liquors be restored to the respective carriers from whom they were wrongfully taken, as aforesaid. That

said William H. Zwick thereupon issued his order directing the Sheriff of Oklahoma County to carry said judgment to effect, and that the sheriff of Oklahoma county did take possession of a part of said liquors and restore the same to the carrier from whose possession they were taken. And thereupon immediately after the same were restored to the said carrier, and before the same were delivered to the original consignees, the above named defendants, Hayes, Waugh, Fenton, Cain, Murdock and Caffey, again seized said liquors under certain pretended search warrants which were obtained from one J. J. Bell, in another Justice Court, and still retain said liquors in their possession regardless of the judgment rendered in favor of said liquors and of these complainants by the Honorable William H. Zwick, thereby necessitating another trial before the said Beall, as Justice of the Peace, of the said issue so tried before the said Zwick; and these complainants aver the facts to be that said defendants openly assert their intention that if said goods are adjudicated by said Beall to be not subject to seizures and are ordered restored to the carriers, that they will seize the same again under certain pretended search warrants to be issued by another court, and that said defendants Hayes, Waugh, Fenton and Cain, claiming to be acting under the directions and instructions of the defendants Haskell, Stone and Caldwell, openly assert their intention to continue such course of seizures and attempted confiscation towards all liquors which may be hereafter shipped by these

complainants in the manner and form hereinbefore set out. 247½ and while same are in the custody of the carriers as aforesaid, and before delivered to the consignee. Your orator further shows that such course of conduct upon the part of defendants would necessitate a multiplicity of suits in order to protect the rights of these complainants, both as to the property already seized and the property hereafter to be shipped by complainants, and will necessitate a great expense and outlay of money. That all of the said defendants who are making said seizures are irresponsible parties, financially. That none of them are under any bond, except the said constables, who are under a small bond of one thousand dollars (\$1000.00) each, and that large quantities of goods are being entirely stolen, or claimed to be stolen from the warehouse in which said parties are storing said goods, and if said parties are permitted to seize and confiscate the goods of these complainants which they intend hereafter to ship to their customers the business of these complainants would be utterly ruined, and that they will be compelled to cease engaging in interstate commerce, and will lose thousands of dollars of profits, to which they are justly entitled, and that these complainants can obtain absolutely no redress in the courts of Oklahoma, as aforesaid, because, under the provisions of said alleged Billups Bill no action of replevin will lie, and these complainants are compelled to apply to this court and to appeal to its equitable powers for relief in order to protect the rights and privileges guaranteed to them under the laws and Constitution of the United States, and that irreparable damage and injury will be

inflicted upon the business of these complainants by reason of the wrongful acts hereinbefore set out.

V.

Your orators further show that all the orders which have
248 been received by them and accepted as hereinbefore set out, are for genuine bona fide interstate shipments and that it is not the intention, either of said purchasers, or of your orators to make any shipments whatever in violation of the Act of Congress known as "The Pure Food Law" or in violation of any law applicable to such shipments and it is not the intention of complainants to misbrand the packages or boxes in which they will ship said liquors with any false or misleading words or inscriptions and that all sales which they intend to hereafter make and any and all shipments which they are not making or intend to hereafter make from Texas to Oklahoma, or any points, are now and always will be in strict compliance with all laws applicable to such shipments, and that in such shipments so to be made in compliance with such orders so made and accepted they will lose the said amount of profits hereinbefore mentioned unless this injunction is granted.

VI.

Your orator further shows that it is claimed by the defendants that all intoxicating liquors found in the State of Oklahoma which have been shipped by complainants in the manner and form hereinbefore set out, and even though still in the course of transportation and part of interstate shipments, are subject to seizure and confiscation under the laws of Oklahoma, and said pretended seizures are made under and by virtue of said claim.

The premises considered, complainants pray that the defendants Charles N. Haskell, as Governor of the State, S. W. Stone, Fred S. Caldwell, and John Hayes, be enjoined and restrained from further advising, aiding, abetting, encouraging or instructing any of the other defendants herein, or any person or persons under their control or within their employ, or within the employ of the State of

Oklahoma, that it is illegal to make shipments of alcoholic
249 liquors into the State of Oklahoma in the manner and form heretofore referred to, and that they be enjoined and restrained from advising, aiding, abetting, encouraging or instructing any of the other defendants herein, or any other person or persons in their employ, or in the employ of the State of Oklahoma, to seize any shipments that may now be in the hands of any common carrier, either in the City of Oklahoma City, or any other point in the State of Oklahoma which have been shipped in the manner and form hereinbefore set out, and are still in the hands of said carriers for transportation and delivery to consignees, and which said shipments have been made by these complainants in the manner and form hereinbefore set out.

Complainants further pray that the defendants, Waugh, Cain, Murdock, Fenton, Caffey and Garrett, and all persons acting under

their authority or control be enjoined and restrained from seizing any shipments or parts of shipments of intoxicating liquors which may be in the hands of any common carrier in Oklahoma City or any other point in the State of Oklahoma, and which have been shipped or may hereafter be shipped by these complainants to consignees in the State of Oklahoma in the manner and form hereinbefore set out while the same are in the hands of such carriers for transportation and before delivery to the consignees and surrender of the bill of lading and while said shipments are interstate shipments. That upon the final hearing of this cause the injunction herein prayed for may be made perpetual, and for such other and further proper and general relief as to Your Honors may seem meet and just in the premises. And your orators further pray to grant unto your orators a writ of subpoena issue out of and under the seal of this Honorable Court, to be directed to the said Charles N. Haskell as Governor, S. W. Stone, Acting Dispensary Agent, Fred S. Caldwell, counsel to the Governor, John Hayes, Assistant Counsel to the Governor, 250 G. F. Caffey, constable, W. J. Garrett, constable, John Queenan, as constable, and to said pretended enforcement officers, B. J. Waugh, F. F. Cain, S. W. Fenton, William Murdock, commanding them on a certain day and date and under a certain penalty, in said writ personally to be and appear before Your Honors and this Honorable Court, and then and there a full, true and perfect answer make to all and every premises, and further to abide, stand by, and perform all orders made by this Honorable Court, and that in the meantime a temporary restraining order issue restraining and enjoining these defendants and each of them until the further order of this Court from performing any and all of the acts hereinbefore set out.

Your orator further prays that this bill may be amended from time to time by adding the names of such parties hereto as causes therefor may arise and the said parties are engaged with the other parties herein in assaults upon the property of these complainants in the manner hereinbefore set forth. And your orators will forever pray in the premises, for such other and further relief in law and equity as they may be entitled to in the premises.

GIDDINGS & GIDDINGS,
Solicitors for Complainants.

UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

D. Dreeben, being duly sworn, deposes and says that he is one of the members of the partnership composed of William Swartz and D. Dreeben, doing business under the name and style of The Cooke County Liquor Company. That he has read the above and foregoing Amended bill of Complaint, and knows the contents thereof, 251 and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

D. DREEBEN.

Subscribed and sworn to before me this 5th day of November, 1909.

[SEAL.]

HARRY L. FINLEY,

Clerk U. S. Circuit Court, Western Dist. of Oklahoma.

Endorsed: No. 488. In the United States Circuit Court, Western District of Oklahoma. William Swartz and D. Dreeben partners doing business under the name and stude of The Cooke County Liquor Company, complainant, vs. Charles N. Haskell, Governor, et al., Defendants. Amended bill of complaint. Filed Nov. 5, 1909. Harry L. Finley, Clerk.

252 In the Circuit Court of the United States Within and for the Western District of Oklahoma.

No. —. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under the Name and Style of The Cooke County Liquor Company, Complainants,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; John Queenan, Constable; W. J. Garrett, Constable; F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, Defendants.

Notice of Hearing.

To Fred S. Caldwell, Solicitor for the Defendants:

You are hereby notified that the application for Temporary Injunction applied for herein, will be presented to the Court at 1:30 o'clock P. M. tomorrow afternoon or such time thereafter as the Court may determine.

Dated this 4th day of November, A. D. 1909.

GIDDINGS & GIDDINGS,

Solicitors for Complainants.

Service of the foregoing notice and copy of the Bill of Complaint is hereby acknowledged this — day of November, A. D. 1909.

Solicitor for Defendants.

UNITED STATES OF AMERICA,

Western District of Oklahoma, ss:

I, G. H. Giddings do on oath state that I am one of the solicitors for the Complainant, that on the 6th day of November, 1909,
253 I served a copy of the above notice on Fred S. Caldwell, Attorney of record for defendant herein, and notified him there-

after and on said day that the hearing of said application was set for today.

Dated this 10th day of November, 1909.

G. H. GIDDINGS.

Subscribed and sworn to before me this 10th day of November, 1909.

[SEAL.]

HARRY L. FINLEY,
Clerk U. S. Circuit Court, Western Dist. of Oklahoma.

Endorsed: #488. Wm. Swartz et al. vs. C. N. Haskell, et al.
Proof of service. Filed Nov. 10, 1909. Harry L. Finley, Clerk.

254 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States Sitting in and for the
Western District of Oklahoma.

No. 488.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business Under
the Name and Style of The Cooke County Liquor Company,
Complainants,

vs.

CHARLES N. HASKELL et al., Defendants.

Temporary Injunction Order.

The above entitled cause came on for hearing before the Court on Wednesday, November 10, 1909, upon the amended bill of complaint of the complainants, pursuant to a former order of this Court. Thereupon the complainants introduced their amended bill of complaint duly sworn to, as an affidavit in support of its application for a temporary injunction issued herein, and thereupon rested. The defendants offered no testimony in contradiction thereof. Thereupon the Court, after considering the amended bill of complaint and the arguments in support thereof, is of the opinion that the relief prayed for by the complainants should be granted as against the defendants John Hays, G. F. Caffey, W. J. Garrett, John Queenan, F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, and that a temporary injunction should issue.

Now, therefore, You, the said John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, and each of you, and all persons acting by, through or under you, or either of you, are hereby enjoined until the further order of this Court from seizing, or causing to be seized,
either directly or indirectly, any intoxicating liquors shipped
255 by the complainants from the State of Texas to actual bona fide consignees within the Western District of the State of Oklahoma, while said intoxicating liquors are in the possession of the interstate common carrier, and before the same have been delivered to such consignees. Provided, however, that this order shall

not apply to any liquors shipped in violation of Section 3449 of the Revised Statutes of the United States, or any other Act of Congress, or to any liquors which are adulterated, or misbranded, within the meaning of the Act of Congress of June 30th, 1906, ch. 3915, 34 Stat. L. 768, commonly known as the Pure Food and Drug Act.

This order to become effective upon the complainants' executing and filing a good and sufficient bond in the sum of Five Thousand (\$5,000.00) Dollars, to be approved by the Clerk of this Court indemnifying the above named defendants against any damage they may sustain thereby in the event it should be determined that this order should not have been issued.

It is further ordered that the complainants, William Swartz and D. Dreeben, partners doing business under the name and style of The Cooke County Liquor Company, have fifteen days from this date in which to execute and file said bond, and that in the meantime the restraining order heretofore issued by this Court shall remain in full force and effect.

To which order and decree, the defendants, and each of them, at the time duly excepted, on the grounds that said order and decree is contrary to law, and that complainants' bill does not state facts sufficient to constitute a cause of action against defendants, or any of them, and that said order and decree is in violation of Section 720 of the Revised Statutes of the United States and in violation of the 11th Amendment to the Constitution of the United States.

JOHN H. COTTERAL, *Judge.*

Endorsed: No. 488. U. S. of America, State of Oklahoma, Western District. William Swartz, et al., vs. C. N. Haskell, et al., Temporary injunction order. Filed Nov. 10, 1909. Harry L. Finley, Clerk.

257 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States within and for said District.

No. 488. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under the Name and Style of The Cooke County Liquor Company, Complainants,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hays, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, Respondents.

Demurrer for Lack of Jurisdiction and Equity.

These respondents, Charles N. Haskell, Governor, S. W. Stone, Acting Dispensary Agent, Fred S. Caldwell, Counsel to the Gov-

ernor, John Hays, Assistant Counsel to the Governor, G. F. Caffey, Constable, W. J. Garrett, Constable, F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, by protestation, not confessing or acknowledging all, or any, of the matters or things in the said bill of complaint contained, to be true, in such manner as the same are therein set forth and alleged, demur to the said bill; and for cause of demurrer show:

I.

That it appears by the complainants' own showing by the said bill that they are not entitled to the relief prayed by said bill against these respondents, or any of them.

II.

That it appears from complainants' said bill of complaint 258 that this Court has no jurisdiction to hear and determine this action, and that the relief prayed for is sought in direct violation of the Eleventh Amendment to the Constitution of the United States, and of Section 720 of the Revised Statutes of the United States.

III.

That complainant's said bill of complaint is wholly without equity.

Wherefore, and for divers other good causes of demurrer in said bill, these respondents demur thereto, and they and each of them pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to complainants' said bill, and they and each of them humbly pray to be hence dismissed with their reasonable costs in their behalf sustained.

FRED S. CALDWELL,
Solicitor for Respondents.

Verification.

STATE OF OKLAHOMA,
County of Logan, ss:

Fred S. Caldwell, being first duly sworn, on oath says: That *is* the solicitor for the respondents to the foregoing demurrer in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point of law; and on behalf of said respondents, and each of them, says that the same is not interposed for delay.

FRED S. CALDWELL.

Subscribed and sworn to before me this 4th day of Dec. 1909.
[SEAL.] JULIET WRIGHT,

Notary Public.

My com. exp. Dec. 19, 1911.

Endorsed: No. 488. U. S. Cir. Ct. State of Okla. Western Dist. William Swartz, et al. vs. C. N. Haskell, et al Demurrer. Filed Dec. 4, 1909. Harry L. Finley, Clerk.

259 Circuit Court of the United States for the Western District of Oklahoma, January Term, 1910, Saturday, January 8th, 1910.

488.

WM. SWARTZ et al., Complainants,

vs.

C. N. HASKELL et al., Defendants.

Now on this January 8th, 1910, comes the plaintiff- herein by their attorneys, Giddings and Giddings, and come the defendants by their attorney, Fred S. Caldwell, thereupon the Demurrer filed herein, of all the defendants, except defendant Queenan, is argued by counsel and submitted to the court.

Journal 3, Page 87.

260 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 488.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under the Name and Style of The Cooke County Liquor Company, Complainant-

vs.

CHARLES N. HASKELL, Governor, et al., Defendants.

Order.

Now on this February 19th, 1910, the demurrer filed herein to Complainant's bill having been heretofore argued and submitted to the Court, on to-wit: January 8th, 1910, the complainant appearing at that time by its attornys, Giddings & Giddings, and the defendants by their attorney, Fred S. Caldwell, and the Court being now fully advised it is,

Ordered, that the said demurrer be and the same is hereby overruled.

It is further ordered that defendants have until tht March, 1910, rule day, in which to file answer herein.

To which order and ruling of the court in overruling the said demurrer, exceptions are allowed the defendants and each of them.

JOHN H. COTTERAL, *Judge.*

Endorsed: 488. Wm. Swartz et al. vs. Charles N. Haskell, Governor et al. Order overruling demurrer. Filed February 19, 1910. Harry L. Finley, Clerk, By M. C. Haws, Deputy.

261 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States in and for said State and District.

No. 488. In Equity.

WILLIAM SWARTZ and D. DREEBEN, Partners Doing Business under the Name and Style of the Cooke County Liquor Company, Complainants,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; C. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, Respondents.

Joint Answer of Respondents, Charles N. Haskell, S. W. Stone, Fred S. Caldwell, John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, F. F. Cain, S. W. Fenton and William Murdock.

These respondents, Charles N. Haskell, S. W. Stone, Fred S. Caldwell, John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, F. F. Cain, S. W. Fenton, and William Murdock, now and at all times hereinafter saving to themselves all and all manner of benefit or exception or otherwise that can or may be had or taken to them in many errors, uncertainties and imperfections in the said bill contained, or so much thereof as these respondents are advised is material or necessary for them to make answer to, answering say:

I.

These respondents admit the citizenship of complainants and the citizenship of these respondents, in manner and form as alleged in said bill of complaint; and these respondents further admit that complainants are dealers in intoxicating liquors, and have their office and place of business in the City of Gainesville, in the State of Texas, and that their method of business carried on and conducted with citizens and residents of the State of Oklahoma is in part carried on and conducted in manner and form as stated and alleged in paragraph I of their said bill of complaint. But these respondents say, that by far the greater portion of such intoxicating liquors so shipped into the State of Oklahoma by complainants, are knowingly shipped into said State and there delivered or caused to be delivered by complainants to sundry and diverse persons for the sole and express purpose of being used by said persons in violation of the laws of the State of Oklahoma, to-wit: violation of the Constitution of said State and in violation of Article III, Chapter 61, of the 1909 Compiled Laws of the State of Oklahoma, and also in violation of an Act of Congress approved on the

15th day of June, 1906, (ch. 3335, U. S. Stat. 1905-6, Part 1, p 267.) and entitled: "An Act to Enable the People of Oklahoma and of the Indian Territory to form a Constitution and State Government, and be admitted into the Union on an equal footing with the original States; and to Enable the People of New Mexico and of Arizona to form a Constitution and State Government, and be admitted into the Union on an equal footing with the original States."

And these respondents further say that as appears from "Record Ten" in the office of the United States Internal Revenue Collector for the District of Kansas, at Leavenworth, in the State of Kansas, of which said District the said State of Oklahoma is a part, the persons within the State of Oklahoma to whom the great bulk of the intoxicating liquors shipped into said State by complainant, are by complainants delivered or caused to be delivered, are persons who have paid the special tax required of liquor dealers by the United States and of all this complainants have or could easily obtain actual

263 knowledge. And these respondents further say, that the great bulk of complainant's said intoxicating liquors so shipped into the State of Oklahoma consists of intoxicating liquors shipped into said State to be there delivered and placed in the possession of said persons who have paid said special tax required by the United States of liquor dealers, and whose sole and only purpose it is to use and dispose of said intoxicating liquors in violation of the laws of said State of Oklahoma, to-wit: Article III, Chapter 61, of the 1909 Compiled Laws of the State of Oklahoma, and the prohibition Article of the Constitution of the State of Oklahoma. And these respondents further say that because of the quantities contained in the shipments and the frequency with which such shipments are made to the same person or persons, and from other facts and circumstances, such as payment by said persons to whom complainants deliver or cause to be delivered said intoxicating liquors, of the special tax required of liquor dealers, by the United States, complainants well know that such intoxicating liquors so brought into the State of Oklahoma by themselves and there by them delivered or caused to be delivered are intended by the persons to whom the same are delivered or caused to be delivered, to be kept, used or disposed of, in violation of said laws of said State of Oklahoma, and therefore constitute and become public nuisances within said State of Oklahoma immediately upon being by complainants placed or caused to be placed in the possession of such persons.

II.

These respondents further admit that respondent, Charles N. Haskell is the duly elected, qualified and acting Governor of the State of Oklahoma, and as such Governor is the head of the executive department of the State of Oklahoma; that the respondent, S. W.

264 Stone is the duly appointed, qualified and acting State Agency Superintendent of the State of Oklahoma, under and pursuant to the terms and provisions of Chapter 61 of the 1909 Compiled Laws of the State of Oklahoma; that the respondent, Fred S. Caldwell, is the duly appointed, qualified and acting

Counsel to the Governor, under and pursuant to Article III, of Chapter 61, of the 1909 Compiled Laws of the State of Oklahoma; that respondent, John Hayes is a duly appointed, qualified and acting Assistant Counsel to the Governor; that the respondents, G. F. Caffey, W. J. Garrett, and John Queenan, are duly constituted, qualified and acting constables of Oklahoma City Township, Oklahoma County, State of Oklahoma; that respondents, F. F. Cain, S. W. Fenton, and William Murdock are assistants, employees, and representatives of the respondents, S. W. Stone, as such State Agency Superintendent of the State of Oklahoma; but these respondents and each of them expressly and specifically deny that they have ever committed any wrong or trespass against complainants, their property or property rights, in manner and form as charged — alleged in paragraph II of their said bill of complaint, and expressly deny that they are contemplating or threatening to commit, cause to be committed or in any manner urge the commission of any such wrong or trespass and expressly aver the facts with reference to all matters referred to in said paragraph II of said bill of complaint to be as follows:

Sections 4180, 4184, 4185, and 4187, of the 1909 Compiled Laws of the State of Oklahoma, are in words and figures as follows:

"SEC. 4180. What unlawful—penalty. It shall be unlawful for any person, individual or corporate, to manufacture, sell, barter, give away, or otherwise furnish, except as in this act provided, any spirituous, vinous, fermented, or malt liquors, or any imitation thereof or substitute therefor; or to manufacture, sell, barter, give away, or otherwise furnish any liquors or compounds of any kind or description whatsoever, whether medicated or not, which contain as much as one-half of one percentum of alcohol, measured by volume, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States; or to ship or in any way
265 convey such liquor from one place within this State to another place therein except the conveyance of a lawful purchase as herein authorized; or to solicit the purchase or sale of any such liquors, either in person or by sign, circular, letter, card, price list, advertisement or otherwise, or to distribute, publish or display any advertisement, sign or notice where any such liquor may be manufactured, bartered, sold, given away, or otherwise furnished, or to have the possession of any such liquors with the intention of violating any of the provisions of this act. A violation of any provisions of this section shall be a misdemeanor, and shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars, and by imprisonment for not less than thirty days, nor more than six months; Provided, however, that the provisions of this act shall not apply to the manufacture and sale of unfermented cider and wine made from apples, grapes, berries or other fruit grown in this State, and to the use of wine for sacramental purposes in religious bodies."

"SEC. 4184. Warrant issued by whom—how served—seizure of

property. If it shall be made to appear to any judge of the district or county court or justice of peace that there is probable cause to believe that liquors are being manufactured, sold, bartered, given away, or otherwise furnished, or are being kept for the purpose of selling, bartering, giving away, or otherwise furnishing liquors in violation of this Act, such judge or magistrate shall issue a warrant directed to any officer of the county whom the complainant may designate, having the power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant, and to seize all such liquors there found, together with the vessels in which they are contained, and all implements, furniture, and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away, or otherwise furnishing of such liquors, and safely keep the same, and to make return within three days of said warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession the same was found, if any, and if no person be found in the possession of said property, his return shall so state. A copy of said warrant shall be served upon the person or persons found in the possession of any such liquors, furniture or fixtures so seized, and if no person be found in possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same are found."

"SEC. 4185. Hearing—Upon the return of such warrant as provided in the next preceding section, the magistrate or judge shall fix a time, not less than ten nor more than thirty days thereafter, for hearing of said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof, was used in violation of any of the provisions of this Act. At such hearing, any party claiming an interest in any such property, may appear and be heard, and if upon such hearing it shall appear that any property so seized was knowingly used, or permitted to be used, in violation of any provision of this Act, the same shall be adjudged forfeited by the State, and shall be delivered to the custody of the superintendent to be disposed of under the provisions of this Act. If upon such hearing it shall appear that any property so seized was not kept or used for an unlawful purpose, or if any person shall show that he is the owner of any furniture, fixtures, or other property seized under such warrant, and that the same, or any part thereof, were unlawfully used without his knowledge or consent, the same shall be returned to its lawful owner."

266 "SEC. 4187. Warrant Not to Issue Except on Oath. No such warrant shall issue but upon probable cause, supported by oath or affirmation describing as particularly as may be the place to be searched, or the person or thing to be seized."

That the method by which the State of Oklahoma enforces the foregoing statutory provisions and abates liquor nuisances found to exist within its borders, within the meaning of said statutes, is as follows:

The district courts, county courts, and justices of peace courts, of said State, are vested with jurisdiction of all actions against any

particular quantity of intoxicating liquor for the purpose of determining whether or not said particular quantity of intoxicating liquor is an offending thing against said laws, and therefore constitutes and is a public nuisance, within the purview and meaning of said laws hereinabove set forth; that all such actions are prosecuted by The State of Oklahoma, directly, in its own name, against said particular quantity of intoxicating liquor as such offending thing; that all such actions are commenced by The State of Oklahoma in its said courts in the following manner, to-wit: Some person having knowledge of the facts appears before a judge of a district court or before a judge of a county court, which said courts are courts of record, or before a justice of the peace, which said justices of the peace courts are not courts of record, and such person so appearing before such judicial officer makes a complaint in writing, and supported by his oath or affirmation, which said complaint so sworn to describes as particularly as may be the place to be searched and the intoxicating liquor to be seized, and also recites facts, which, standing alone and undisputed, are sufficient to establish prima facie the existence of such intoxicating liquors as a liquor nuisance; that upon such sworn complaint, in writing, said judicial officer, to whom the same is presented, judicially determines whether or not there is probable cause for the issuance of a warrant, pursuant to the terms and provisions of said sections 4184 and 4185, supra, of said laws, and if said judicial officer thereupon judicially determines that such probable cause exists, he thereupon causes to be instituted, in the respective judicial tribunal over which he presides, an action by the State of Oklahoma, against such intoxicating liquor, so described in said complaint, and forthwith issues in said action a search and seizure warrant, pursuant to the terms and provisions of said sections 4184 and 4185 supra, of said laws; and such search and seizure warrant is, by said judicial officer so issuing the same, directed to one of the executive officers of said judicial tribunal over which said judicial officer presides, to-wit: a constable, or sheriff, or a duly constituted deputy of either, and such warrant is by such judicial officer delivered to such executive officer of said judicial tribunal for service and execution; that said sheriff or constable, or said duly constituted deputy of either, to whom such search and seizure warrant is so directed and delivered, takes the same and proceeds therewith to the place described therein, and by authority thereof seizes and takes possession of all intoxicating liquor there found which is described in said warrant, and said officer so executing said warrant thereupon serves a copy of the same upon the person or persons found in possession of such intoxicating liquor, and if no person be found in possession thereof said officer posts a copy of such warrant on the door of the building or room or compartment or place where the said intoxicating liquor is found; that thereafter, and within three days from the issuance of such warrant, said officer makes due return thereof to said judicial tribunal out of which the same issued, and in such return said officer shows all acts and things done by him thereunder, with a particular statement of all intoxicating liquors seized

and of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said intoxicating liquors his return so states; that upon such return of such warrant, in manner and form as hereinabove stated, said judicial officer who issued said warrant fixes a time not less than ten days nor more than thirty days thereafter for a hearing upon said return, and at such hearing said judicial tribunal proceeds to hear and determine whether or not the intoxicating liquor so seized or any part thereof was a thing offending against said laws, and was therefore a liquor nuisance. At such hearing any party claiming an interest in any such intoxicating liquor may appear before said judicial tribunal and be heard, and if upon such hearing, it shall appear or shall be shown, that any such intoxicating liquor so seized, was at the time of such seizure a shipment made to a person within the State of Oklahoma, from a place outside of said State, and had not been delivered by the interstate carrier, under the contract of interstate shipment, to the consignee at the place of destination, then, in that event, pursuant to a decision of the Supreme Court of Oklahoma, in the case of *State v. 18 Casks of Beer, et al.*, 104 Pac. 1093, said judicial tribunal forthwith orders and adjudges that such intoxicating liquors be returned to the person or persons so claiming it, on the ground that at the time it was seized it had not ceased to be interstate commerce within the meaning of subdivision 3, section 8, Article I, of the Constitution of the United States, and had not arrived within the State of Oklahoma, within the meaning of the Act of Congress of August 8, 1890, (c. 728, 26 Stat. 313, U. S. Comp. St. 1901, p. 3177.). Provided, however, that if it be shown and established at such hearing that said intoxicating liquor or any portion thereof was so shipped from a point outside the State of Oklahoma to a place within said State; and that such act of Shipment was performed in violation of section 3449 of the Revised Statutes of the United States, or in violation of any one or more of sections 238, 239 and 240 of the Act of Congress of March 4, 1909, (35 Stat. L. 1136-7) or that said intoxicating liquor was adulterated" or "misbranded" within the meaning of the Act of Congress of June 30, 1906, ch. 3915, 34 Stat. L. 768, commonly known as the Pure Food and Drug Act, then as to all such liquor so shipped or "adulterated" or "misbranded" in violation of said acts of Congress, said judicial tribunal hold said commerce clause of the Constitution of the United States, supra, to be inapplicable, on the ground that such intoxicating liquor is not and, under such circumstances, could not be made a legitimate subject of interstate commerce, and, therefore, as to all such liquor, said judicial tribunals proceed regardless of the fact that the same may have been in the possession of an interstate common carrier undelivered under a contract of interstate shipment at the time the seizure was made.

III.

As to paragraph III of complainants' bill of complaint, these respondents and each of them, specifically deny that they or any

of them have ever interfered or that they or any of them have ever threatened or are threatening or in any manner intend to interfere, with complainants' said business, and said interstate shipments of intoxicating liquors, sent into the State of Oklahoma, except to such extent and in such manner as the same may be incidentally affected by the due and orderly procedure in said courts of the State of Oklahoma, of proceedings instituted therein and prosecuted by the State of Oklahoma pursuant to said sections 4184, 4185 and 4187, of said 1909 Compiled Laws of the State of Oklahoma, in manner and form hereinabove set forth, and these respondents and each of them expressly deny that they have ever in any manner, counseled, instructed or advised or that they intend in the future in any manner to counsel, instruct or advise, any person or persons, whomsoever, to act in any manner touching or concerning

270 complainants' said interstate shipments of intoxicating liquor into the State of Oklahoma, other than according to the due and orderly course and procedure under said laws of the State of Oklahoma, in manner and form hereinabove stated.

IV.

As to paragraph IV of complainants' said bill of complaint these respondents say: that said paragraph IV is fully answered by paragraph II of this answer.

V.

As to paragraph VI of complainants' said bill of complaint, these respondents say: that they deny each and every allegation and statement therein contained.

VI.

And these respondents deny all and all manner of unlawful combination and confederation wherewith they are charged in said bill, and without this there is no other material cause or thing in said complainants' bill of complaint contained material or necessary for this respondent to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this- respondents, all of which matters and things these respondents are ready and willing to aver, maintain, and prove, as this Honorable Court shall direct, and these respondents humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

FRED S. CALDWELL,
Solicitor for Respondents.

Endorsed: No. 488, In Equity. In the Circuit Court. William Swarts and D. Dreeben, partners doing business under the name and style of the Cooke County Liquor Company, complain-
271 & 272 ants, vs. Charles N. Haskell, Governor, S. W. Stone, Acting Dispensary Agent, Fred S. Caldwell, Counsel to the Governor, John Hayes, Assistant Counsel to the Governor, G. F.

Caffey, Constable, W. J. Garrett, Constable, John Queenan, Constable, F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, Respondents. Joint Answer of Respondents, Charles N. Haskell, S. W. Stone, Fred S. Caldwell, John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, F. F. Cain, S. W. Fenton, and William Murdock. Filed March 5, 1910. Harry L. Finley, Clerk, By M. V. Haws, Deputy.

273 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. 489. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Complainant,
vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Defendants.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States for the Western District of the State of Oklahoma:

The O. F. Haley Company, a corporation, and a citizen of the United States and of the State of Texas, residing at Gainesville in the said State of Texas, brings this its bill of complaint, against Charles N. Haskell, S. W. Stone, Fred S. Caldwell, John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, S. W. Fenton, F. F. Cain, William Murdock and B. J. Waugh, defendants above named, and occupying the official positions hereinafter more fully set forth, all of whom are citizens, residents and inhabitants of the State of Oklahoma in the Western District thereof, and complain of said defendants and say:

I.

That your orator is engaged in business as dealer in alcoholic and intoxicating liquors, and has its office and place of business in the city of Gainesville, County of Cooke, and State of Texas, and
274 that they have built up and now enjoy a large and lucrative business in the sale of such liquors in the State of Texas, and a part of their business consists, in a large part, in the sale of liquors in the State of Texas, to customers residing outside of the State of Texas, including customers of the State of Oklahoma. That its principal method and custom of making shipments into various places, including the State of Oklahoma, is to receive mail orders

for said shipments direct from their customers outside of the State for sales of liquors to be made in Texas, and after said orders are accepted by your orator to deliver said liquors to the Gulf, Colorado & Santa Fe Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Missouri, Kansas & Texas Railway Company, and the Wells Fargo & Company's express and other common carriers at Gainesville, the shipping point in said State of Texas for transportation from said point to the various points in the State of Oklahoma where said customers reside, the said common carriers agreeing to transport said liquors by interstate shipment from Gainesville to said points in Oklahoma, and there to deliver to said customers in Oklahoma the said liquors. And in all cases wherein said liquors are shipped, as aforesaid, from said point in Texas to Oklahoma the sales are made outside the State of Oklahoma to be delivered to the consignees in the State of Oklahoma by the carrier aforesaid.

Your orator further shows that their custom is after delivering the said liquors to the railways and express companies for shipment, as aforesaid, to said point in the State of Oklahoma, to receive from the carrier a bill of lading, which bill of lading is generally made out in the following form, and to forward said bill of lading to some bank or responsible person, to be delivered to the purchaser upon payment of a draft for the purchase price which is attached to said bill of lading. The bill of lading generally used being in substance and form about as follows:

"Received from in apparent good order, the following orders marked to be delivered in like good order. Gainesville, Texas, By Railway. To shipper's Order. Notify Marks No. Article Freight prepaid."

The railway company or other carrier filling in the blanks so as to agree with the dates, names of purchaser, character of goods, and the name of the consignee to be notified as they are shown, and that the custom and understanding between the parties to said transaction is that it gives to the shipper the right to stop said goods at any time before the said goods are delivered to the said purchasers at their destination in Oklahoma, and before the surrender of the bill of lading and the said goods are not delivered to the said purchaser or consignee until they arrive at their said destination and are delivered to the consignees upon the production and surrender of said bill of lading. Each box is plainly marked thereon with the name and address of the consignee.

Your orator further shows that at the time complainant has been given orders for said goods to be sold in Texas and shipped by carrier, as aforesaid, to Oklahoma at various points therein, to be delivered there to the consignees in the manner and form hereinbefore set out, and their legitimate profits on said sales so made in Texas for shipments into the State of Oklahoma will be largely in excess of five thousand dollars (\$5000.00), and they have accepted said orders and expect in the proper and legitimate exercise of its right

to engage in commerce with the citizens of Oklahoma to continue said business and their said profits, and to continue to accept orders at their said office in Gainesville for sales in Texas and deliveries in Oklahoma, as aforesaid, and that they are not participating in any unlawful sale of intoxicating liquors in the State of Oklahoma, but are only engaged in their said legitimate business of engaging in interstate commerce as aforesaid.

276

II.

Your orator further shows that the defendant, Charles N. Haskell is the duly qualified and elected Governor of the State of Oklahoma, and as such he is the head of the executive department of said State. That the defendant Caldwell is the duly appointed counsel to the Governor. That the defendant John Hayes is the duly appointed assistant counsel to the Governor; that the defendants Caffey, Garrett and Queenan are duly elected and qualified constables in Oklahoma City in Oklahoma County in said State; that the defendant Stone is the duly appointed dispensary agent for the State of Oklahoma; and the defendants Waugh, Fenton and Murdock and Cain all are claiming to be some kind of State officers employed by the defendants Haskell, Stone, Caldwell and Hayes, and acting under and pursuant to their direction, control and supervision in the commission of the wrongs and trespasses hereinafter more fully set out. That said Haskell, Stone, Caldwell and Hayes, claiming to be enforcing the provisions of a certain act of the legislature of the State of Oklahoma, known as the "Billips Bill", and otherwise known as the "Enforcing Act", which alleged bill has for its object, or claims to have for its object the prohibition of the bartering, selling or giving away of intoxicating liquors in the State of Oklahoma and the enforcement of same, have instructed the other defendants herein, and many other and numerous parties whose names are unknown to these complainants, that all shipments of intoxicating liquors made in the manner and form hereinbefore set out are illegal and in violation of said Enforcing Act, and that said alleged act of the Oklahoma legislature prohibiting the bartering, selling or giving away of intoxicating liquors applies to and includes within its provisions all shipments of liquor which are known as interstate shipments while same are still in the hands of the carrier for transportation and delivery before sur-
 277 render of the bill of lading and delivery to the consignees and made in the manner and form hereinbefore set out; and said Haskell, Stone, Caldwell and Hayes, and their other agents, acting under their instructions, directions and orders, have ordered, authorized and directed said Waugh, Cain, Fenton, Murdock, and numerous others whose names are unknown to complainant, to seize and confiscate and appropriate to their own use and to the use of the State of Oklahoma all liquors so shipped by complainants in the manner and form hereinbefore set out while the same are in the hands of the railway companies in the State of Oklahoma, and before delivery to the consignees as aforesaid, and while in course of transportation, as aforesaid, whereby it is their purpose and in-

tention to deprive complainant of the possession and value of said goods, and prevent them from engaging further in the business of making interstate shipments, as hereinbefore described.

III.

That heretofore, and on divers dates and occasions during the months of June, July, August September, and October, 1909, complainants, pursuant to their said method of doing business as aforesaid and following out their right to engage in legitimate interstate commerce with the citizens of Oklahoma, did ship from the State of Texas to many parties residing in Oklahoma, at various points, and especially in Oklahoma City, certain intoxicating liquors, consisting of wine, whiskey, beer, etc., aggregating in value over six thousand dollars (\$6000.00). That said shipments were made upon orders received and accepted in Texas, and said liquors were sold in Texas, and delivered in said state of Texas to the Gulf, Colorado & Santa Fe Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Missouri, Kansas & Texas Railway Company, and the Wells Fargo & Company Express, and other carriers for transportation and delivery to said Oklahoma

278 City and other points in Oklahoma, and that while said liquors which were so intended for said purchasers in Oklahoma City *was* in course of transportation and in the hands of said carriers in Oklahoma City and before consummation of the said interstate shipment, by surrender to consignees of said bill of lading, the said defendants Caffey, Queenan, Garnett and others acting under the immediate instructions, directions and control of the defendants Hayes, Waugh, Fenton, Cain and Murdock, and of other parties whose names are unknown, acting under the control of said defendants above named, and all of said parties, acting under the direction and control of the defendants Haskell, Stone and Caldwell, and claiming to act under and by virtue of search warrants issued out of the Justice Court of Oklahoma County by one William H. Zwick, Justice of the Peace, did seize all of said liquors that were then in the hands of said carriers, and by force and arms did deprive the said carrier of the possession thereof with the intent to permanently appropriate the same to the use of the said defendants, and for the use of the State of Oklahoma, and did publicly assert their intention to permanently confiscate the said liquors and all of said defendants pursuant to an understanding between them to prevent these complainants from carrying on their said legitimate business of making interstate shipments from the State of Texas to the State of Oklahoma, as aforesaid, have threatened, and do intend to carry out said threats, and do openly assert it to be their intention to seize and confiscate all liquors which this claimant intend hereafter to make in the manner and form set out while the same are in the hands of common carriers and constitute a part of an interstate shipment of liquors, in course of transportation, and before delivery to the consignees.

IV.

279 Your orator further shows that the alleged and pretended search warrants which were so issued by the Honorable William H. Zwick, Justice of the Peace, as aforesaid, were issued, or claimed to be issued pursuant to the provisions of the prohibition act of Oklahoma known as the Billups Bill, as aforesaid, but that the said Billups Bill has no application to the shipments so made by the complainants and intended hereafter to be made by them because the provisions of the said Billups Bill in so far as the same is applied or intended to be applied to interstate commerce shipments are unconstitutional and void and of no effect. And your orators further show that said Billups Bill, under which defendants claim to be acting, even if the same were valid and applied to shipments of the character hereinbefore set out, furnishes no adequate protection to complainants whatever, either as to the goods which have already been wrongfully seized by the defendants, and which are now in their possession under said wrongful seizures, or as to the goods which these complainants intend to ship, and which the said defendants intend to seize as hereinbefore set out. That after said defendants had wrongfully seized said goods as aforesaid under said pretended search warrants, the complainants, seeking to protect themselves appeared before the Honorable William H. Zwick, Justice of the Peace, upon the day upon which said cause was set for trial, and upon the day upon which the cause as to the status of the goods so seized were to be adjudicated, and on said hearing said William H. Zwick, after hearing the evidence, and after hearing counsel for said defendants purporting to represent the State of Oklahoma, and counsel for these complainants, adjudicated that said liquors were not subject to seizure and confiscation under the laws of Oklahoma, and that the same were interstate commerce shipments, and ordered that said liquors be restored to the respective carriers from whom they were wrongfully taken, as aforesaid. That said William H. Zwick thereupon issued

280 his order directing the sheriff of Oklahoma County to carry said judgment to effect, and that the Sheriff of Oklahoma county did take possession of a part of said liquors and restore the same to the carrier from whose possession they were taken. And thereupon immediately after the same were restored to the said carrier, and before the same were delivered to the original consignees, the above named defendants, Hayes, Waugh, Fenton, Cain, Murdock and Caffey, again seized said liquors under certain pretended search warrants which were obtained from one J. J. Beall in another Justice Court, and still retain said liquors in their possession regardless of the judgment rendered in favor of said liquors and of these complainants by the Honorable William H. Zwick, thereby necessitating another trial before the said Beall, as Justice of the Peace, for the said issue so tried before the said Zwick; and these complainants aver the facts to be that said defendants openly assert their intention that if said goods are adjudicated by said Beall to be not subject to seizure and are ordered restored to the carriers, that they will seize the same again under certain pre-

tended search warrants to be issued by another court, and that said defendants Hayes, Waugh, Fenton and Cain, claiming to be acting under the directions and instructions of the defendants Haskell, Stone and Caldwell, openly assert their intention to continue such course of seizures and attempted confiscation towards all liquors which may be hereafter shipped by these complainants in the manner and form hereinbefore set out, and while same are in the custody of the carriers as aforesaid, and before delivery to the consignee. Your orator further shows that such course of conduct upon the part of defendants would necessitate a multiplicity of suits in order to protect the rights of these complainants, both as to the property already seized and the property hereafter to be shipped by complainants, and will necessitate a great expense and 281 outlay of money. That all of the said defendants who are making said seizures are irresponsible parties, financially. That none of them are under any bond, except the said constables, who are under a small bond of one thousand dollars (\$1000.00) each, and that large quantities of goods are being entirely stolen, or claimed to be stolen, from the warehouses in which said parties are storing said goods, and if said parties are permitted to seize and confiscate the goods of these complainants which they intend hereafter to ship to their customers, the business of these complainants would be utterly ruined, and that they will be compelled to cease engaging in interstate commerce, and will lose thousands of dollars of profits, to which they are justly entitled, and that these complainants can obtain absolutely no redress in the courts of Oklahoma, as aforesaid, because, under the provisions of said alleged Billups Bill no action of replevin will lie, and these complainants are compelled to apply to this Court and to appeal to its equitable powers for relief in order to protect the rights and privileges guaranteed to them under the laws and Constitution of the United States, and that irreparable damage and injury will be inflicted upon the business of these complainants by reason of the wrongful acts hereinbefore set out.

V.

Your orator further shows that it is claimed by the defendants that all intoxicating liquors found in the State of Oklahoma which have been shipped by complainants in the manner and form hereinbefore set out, and even though still in the course of transportation and part of interstate shipments, are subject to seizure and confiscation under the laws of Oklahoma, and said pretended seizures are made under and by virtue of said claim.

The premises considered, complainants pray that the defendants Charles N. Haskell, as governor of the state, S. W. Stone, Fred S. Caldwell, and John Hays, be enjoined and restrained from 281½ further advising, aiding, abetting, encouraging or instructing any of the other defendants herein, or any other person or persons under their control or within their employ, or within the employ of the State of Oklahoma, that it is illegal to make shipments of alcoholic liquors into the State of Oklahoma in the manner and form heretofore referred to, and that they be en-

joined and restrained from advising, aiding, abetting, encouraging or instructing any of the other defendants herein, or any other person or persons in their employ, or in the employ of the State of Oklahoma, to seize any shipments that may now be in the hands of any common carrier, either in the city of Oklahoma City, or any other point in the State of Oklahoma which have been shipped in the manner and form hereinbefore set out, and are still in the hands of said carriers for transportation and delivery to consignees, and which said shipments have been made by these complainants in the manner and form hereinbefore set out.

Complainants further pray that the defendants Waugh, Cain, Murdock, Fenton, Caffey and Garrett, and all persons acting under their authority or control be enjoined and restrained from seizing any shipments or parts of shipments of intoxicating liquors which may now be in the hands of any common carrier in Oklahoma City or any other point in the State of Oklahoma, and which have been shipped by these complainants to consignees in the State of Oklahoma in the manner and form hereinbefore set out while the same are in the hands of such carriers for transportation and before delivery to the consignees and surrender of the bill of lading and while said shipments are interstate shipments. That upon the final hearing of this cause the injunction herein prayed for may be made perpetual, and for such other and further and general relief as to Your Honors may seem meet and just in the premises. And your orators further pray to grant unto your orators a writ of subpoena

282 issue- out of and under the seal of this honorable court, to be directed to the said Charles N. Haskell as governor, S. W.

Stone, acting dispensary agent, Fred S. Caldwell, counsel to the governor, John Hayes, assistant counsel to the governor, G. F. Caffey, as constable, W. J. Garrett, as constable, John Queenan, as constable, and to said pretended enforcement officers, B. J. Waugh, F. F. Cain, S. W. Fenton, William Murdock, commanding them on a certain day and date and under a certain penalty, in said writ personally to be and appear before Your Honors and this Honorable Court, and then and there a full, true and perfect answer make to all and every premises, and further to abide, stand by, and perform all orders made by this Honorable Court, and that in the meantime a temporary restraining order issue restraining and enjoining these defendants and each of them until the further order of this court from performing any and all of the acts hereinbefore set out. Your orator further prays that this bill may be amended from time to time by adding the names of such parties thereto as causes therefor may arise and the said parties are engaged with the other parties herein in assaults upon the property of these complainants in the manner hereinbefore set forth. And your orators will forever pray for such other and further relief as it may be entitled to in equity & good conscience.

GIDDINGS & GIDDINGS,
GEO. H. GIDDINGS,
E. J. GIDDINGS,

Solicitors for Complainants.

UNITED STATES OF AMERICA,
*Western District of Oklahoma,
City and County of Oklahoma:*

O. F. Haley, being duly sworn, deposes and says that he is the
duly constituted and appointed agent of the complainant,
283 The O. F. Haley Company, a corporation. That he has
read the above and foregoing bill of complaint, and knows
the contents thereof, and that the same is true of his own knowledge,
except as to the matters which are therein stated on information
and belief, and as to those matters he believes it to be true.

O. F. HALEY.

Subscribed and sworn to before me this 21st day of October, 1909.

[SEAL.]

MARY S. HILL,
Notary Public.

My com. expires Nov. 16, 1911.

Endorsed: No. 489. In the United States Circuit Court, Western
District of Oklahoma. O. F. Haley Company, a corporation, com-
plainant, vs. Chas. N. Haskell, et others, Defendants. Complaint
in Equity. Filed Oct. 22, 1909. Harry L. Finley, Clerk.

284a In the Circuit Court of the United States for the Western
District of Oklahoma.

No. 489. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Complainant,
vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary
Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes,
Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J.
Garrett, Constable; J. Queenan, Constable; F. F. Cain, S. W.
Fenton, William Murdock and B. J. Waugh, Defendants.

Restraining Order.

This cause coming on to be heard on this the 22nd day of Oc-
tober, A. D. 1909, upon the complaint of the plaintiff, and the
Court, after being fully advised in the premises, is of the opinion
that a temporary restraining order should issue.

It is therefore ordered that the defendants, John Hayes, B. J.
Waugh, S. W. Fenton, F. F. Cain, William Murdock, G. F. Caffey,
John Queenan and W. J. Garrett, and each of them, and all persons
acting by, through or under them be and they are hereby restrained
from seizing or causing to be seized, either directly or indirectly,
any intoxicating liquors shipped by the complainant, The O. F.
Haley Company, from Gainesville, Texas, to consignees within the
Western District of the State of Oklahoma, while in the possession

of the common carrier and before the same have been delivered to such consignees.

It is further ordered that the defendants, and each of them, be served with a notice of this order to be and appear before the Court at the Federal Court Room in Guthrie, Oklahoma, on Tuesday, the 26th day of October, A. D. 1909, at 10:00 o'clock A. M., and 284 to then and there show cause why a temporary injunction should not be issued, as prayed for in the complainant's bill.

It is further ordered that the restraining order herein granted shall be in force and effect until the time fixed for the hearing of said application for a temporary injunction, and until a further order of the court.

It is further ordered that a copy of this order, certified under the hand of the clerk and seal of the court, be served on the defendants, and each of them, by the Marshal of the Western District of Oklahoma.

This order to become effective upon the complainant, The O. F. Haley Company, a corporation, executing and filing a good and sufficient bond in the sum of One Thousand Dollars, (\$1000.00), to be approved by the clerk of this Court, indemnifying the defendants herein against any damage they may sustain thereby in the event it shall be determined that this Restraining Order should not have been issued.

JOHN H. COTTERAL, *Judge.*

Endorsed: No. 489. O. F. Haley Company, a corporation, Complainant, vs. Charles N. Haskell et al., Defendants. Restraining Order. Filed Oct. 22nd, 1909. Harry L. Finley, Clerk.

285 United States Circuit Court, Western District of Oklahoma, Special Guthrie Term, 1909, Tuesday, October 26th, 1909.

489. In Equity.

THE O. F. HALEY Co., Complainant,

vs.

CHARLES N. HASKELL et al., Defendants.

Now on this October 26th, 1909, this cause comes on for hearing on the application for a temporary injunction. The complainant appears by its attorneys, Giddings & Giddings, and the defendants appear by their attorney, Fred S. Caldwell.

Complainant and defendants introduce affidavits and evidence, and thereupon it is ordered that this cause be continued for further hearing until Thursday, October 28th, 1909, at 10 o'clock A. M., and it is further ordered that the complainant have until 12 o'clock tomorrow to serve copies on defendants of its affidavits to be used on the said hearing, and that defendants have until Thursday, October 28th, 1909, to serve copies of their affidavits upon complainant.

286 United States Circuit Court, Western District of Oklahoma,
Special Guthrie Term, 1909, Thursday, October 28th, 1909.

489.

O. F. HALEY COMPANY, Complainant,
vs.
CHARLES N. HASKELL et al., Defendants.

Now on this October 28th, 1909, this cause comes on for further hearing on the application for a temporary injunction herein.

The complainant is present by its attorneys, Giddings & Giddings, and the defendants are present by their attorney, Fred S. Caldwell.

Thereupon complainant introduce further evidence and affidavits and Defendants introduce additional affidavits and thereafter argument of counsel is heard, and at the close of the argument the court reserves decision herein.

287 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western
District of Oklahoma.

No. —. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Complainant,
vs.
CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Defendants.

Affidavit.

C. L. Maguire being duly sworn, deposes and says he is the freight agent of the Missouri, Kansas & Texas Ry. Co. at Oklahoma City. That at various times during the months of June, July, August and September, 1909, certain shipments of intoxicating liquors consigned to various parties in Oklahoma City from points outside the state of Oklahoma, and aggregating the value of over two thousand dollars (\$2000.00), and in some instances in which The O. F. Haley Company was the shipper from Gainesville, Texas, have been seized by search warrants in the hands of the defendant Caffey from this railroad company, and said seizures were made before delivery and surrender of the bill of lading, and in each instance the goods were shipped from outside the state into this state to shipper's order, and in every instance the names of the consignees were plainly marked on the package.

C. L. MAGUIRE.

Subscribed and sworn to before me this 25th day of October, 1909.

[SEAL.]

MARY S. HILL,
Notary Public.

My com. expires Nov. 16, 1911.

Endorsed: No. 489. In the U. S. Circuit Court. The O. F. Haley Co. Plaintiff vs. Chas. N. Haskell et al. Defendant. Affidavit of C. L. Maguire. Filed Oct. 26, 1909. Harry L. Finley, Clerk.

288 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. —. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Complainant,
vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Defendants.

Affidavit.

STATE OF OKLAHOMA,
Oklahoma County:

H. D. Garrison, being duly sworn, deposes and says that he is the sheriff of Oklahoma County, State of Oklahoma. That on the — day of October, 1909, certain writs of execution were placed in his hands by Honorable William H. Zwick, Justice of the Peace, to deliver to certain railroad companies certain intoxicating liquors which had been seized under search warrants while in the possession of said railroad companies which have been adjudicated by the said William H. Zwick as not subject to seizure under the laws of Oklahoma, including certain liquors belonging to the complainant herein. That I called upon the defendants Cain and Waugh, whom I was informed were in possession of said liquors, to deliver said liquors, and they refused to do so, threatening to make forcible resistance. That I finally induced them to consent to my taking possession of said liquors and thereafter I restored a part of said liquors to the carriers from which they were taken. I am informed
289 that immediately after the same had been restored to the said carriers from which they were taken they were seized by the defendant Caffey under search warrants sworn out before the Honorable J. J. Beall another Justice of the Peace in said county, and are now being held under said search warrant. That when I first called upon said Waugh and Cain to obtain possession of said liquors, they informed me that they were instructed by the gov-

ernor and *enforcement* attorney Hayes to make armed resistance, if necessary, to my obtaining possession of said liquor.

H. D. GARRISON.

Subscribed and sworn to before me this 25 day of October, 1909.

[SEAL.]

MARY S. HILL,
Notary Public.

My commission expires Nov. 16, 1911.

Endorsed: In the U. S. Circuit Court. No. 489. The O. F. Haley Co., Plaintiff, vs. Chas. N. Haskell, et al., Defendants. Affidavit of H. D. Garrison. Filed Oct. 26, 1909. Harry L. Finley, Clerk.

290 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. —. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Plaintiff,
vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Defendants.

Affidavit.

STATE OF OKLAHOMA,
Oklahoma County:

George H. Giddings, being duly sworn, deposes and says that he is one of the attorneys for the complainant herein, and as such he represented it in the hearing before the Honorable William H. Zwick in certain cases pending in said court, wherein certain intoxicating liquors belonging to complainant had been seized while in the possession of said railway companies in Oklahoma City. That upon said hearing the State was represented by counsel. That the court, after hearing the evidence, adjudicated the liquors to be not subject to seizure, but to constitute interstate commerce shipments, and ordered that the same be restored to the carriers from which they were taken. That after the sheriff had taken possession of the said liquors under the orders of the said Zwick and restored part to the carriers from which they were taken, the said liquors which had just been adjudicated not subject to seizure were immediately
291 seized under search warrants issued out of the court of the Honorable J. J. Beall, according to my information and belief. And according to my information and belief they were

the same goods that were restored by the said Garrison, Sheriff of Oklahoma County, to the said carriers under the orders of said court. I was informed by John Hayes in the presence of several other parties that it was his instructions from his superiors to immediately seize said liquors as soon as the same were restored to the carriers under the order of Zwick's court.

GEO. H. GIDDINGS.

Subscribed and sworn to before me this 25th day of October, 1909.

[SEAL.]

MARY S. HILL,
Notary Public.

My commission expires Nov. 16, 1911.

Endorsed: No. 489. In the U. S. Circuit Court. The O. F. Haley Company, Plaintiff, vs. Chas. N. Haskell, et al., Defendants. Affidavit of Geo. H. Giddings. Filed Oct. 26, 1909. Harry L. Finley, Clerk.

292 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. —. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Plaintiff,
vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Defendants.

Affidavit.

STATE OF OKLAHOMA,
Oklahoma County, ss:

William H. Zwick, being duly sworn, deposes and says that he is the Justice of the Peace before whom certain intoxicating liquors in causes Number- 1375, 1393, 1394, 1397, 1401, 1434, 1441, 1502 were tried, and it appeared from the evidence in each of said causes that said liquors had been seized while in the possession of the carriers, and before delivery to the consignees. That I found said liquors not to be subject to forfeiture, and ordered the same restored to the carriers from which they were taken. It appeared from the trial of many of said causes before me that the search warrants were obtained upon affidavits made by the defendants Fenton, Cain, Waugh and Murdock, and the same were executed mostly by the defendant Caffey, and in many instances that they were executed

upon goods found in the possession of carriers before the bills of lading were surrendered, and before delivery to the consignee. I further state that it is my information that immediately upon said goods being restored to the carriers under the orders of my court, the same were seized under search warrants issued out of the court of *the J. J. Beall*, a purported Justice of the Peace.

WILLIAM H. ZWICK.

Subscribed and sworn to before me this 25 day of October, 1909.
[SEAL.] H. T. HOWARD,

Notary Public.

My commission expires Dec. 22, 1912.

Endorsed: No. 489. In the U. S. Circuit Court. The O. F. Haley Co. Plaintiff vs. Chas. N. Haskell et al. Defendants. Affidavit of Wm. H. Zwick. Filed Oct. 26, 1909. Harry L. Finley, Clerk.

294 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. —. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Complainant,
vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Defendants.

Affidavit.

F. J. Best, being duly sworn, deposes and says that he is the agent of the Atchison, Topeka & Santa Fe Railway Company at Oklahoma City. Affiant shows that at various times during the months of June, July, August and September, 1909, certain shipments of intoxicating liquors which were consigned by the O. F. Haley Company and the Cooke County Liquor Company of Gainesville, Texas, to various parties in Oklahoma City, aggregating in value over five thousand dollars (\$5000.00) were seized by the defendant Caffey under search warrants issued by William H. Zwick and other Justices of the Peace, in Oklahoma City, while in the possession of the Atchison, Topeka & Santa Fe Railway Company in Oklahoma City for the purpose of being delivered to the consignees, and before the delivery to the consignee and before the surrender of the bill of lading. That on each occasion the said Caffey was accompanied by either the defendant Waugh, or Fen-

on, or Cain, or Murdock, and was acting under their instructions. That in each instance the goods that were seized were shipped to shipper's order, and were plainly marked with the names of the consignees thereon. That after the said Justice of the Peace Zwick had ordered the liquors returned to this Railway Company, and after the sheriff had returned part of the goods in accordance with said order, the same were immediately seized by the defendant Caffey under search warrants issued from the Justice of the Peace Beall's court, and same were held by said Caffey.

F. J. BEST.

Subscribed and sworn to before me this 25th day of October, 1909.

[SEAL.]

MARY S. HILL,
Notary Public.

My commission expires Nov. 16, 1911.

Endorsed: No. 489. In the U. S. Circuit Court. The O. F. Haley Co., Plaintiff, vs. Chas. N. Haskell, et al., Defendants. Affidavit of W. J. Best. Filed Oct. 26, 1909. Harry L. Finley, Clerk.

296 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. —. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Complainant,

vs.

CHARLES N. HASKELL et al., Defendants.

Affidavit.

O. F. Haley, being duly sworn, deposes and says that he is the President of the O. F. Haley Company, a corporation, complainant in the above entitled cause, and that he, personally, has supervision of the shipments and preparation for shipment and packing of the various boxes that are consigned to parties purchasing. And affiant states that it is not true that at any time the complainant herein shipped any liquors to any point in Oklahoma or elsewhere in boxes or packages that have been misbranded or inscribed in any manner for the purpose of deceiving any person as to the contents thereof, or that are calculated to deceive any person as to the contents thereof. That in almost all instances goods are shipped in the original boxes in which they are received by complainant from the distillery, except in cases where they receive small orders for assorted liquors. That for the purpose of meeting such orders the complainant purchases in large quantities from the various retailers in Gainesville, Texas, secondhand boxes, and in some instances these

boxes contain the original inscriptions which were placed thereon when first used; for instance, some boxes might contain the word "soap", or "Tobacco", or "Tomatoes", or "Shoes", and so forth.

as the case may be, but this is in very rare instances and
 297 only in the case of small assorted orders as heretofore set out. That in no instance does the complainant place said inscription upon the boxes, but in all instances the boxes contain the words "Shipped from The O. F. Haley Company", or similar words, and in all instances the bills of lading contain an exact description of the kind and character of said goods. That affiant does not intend at any time hereafter to ship any goods with any false brands or inscriptions thereon. I attach hereto the original bills of lading covering these shipments, insofar as I have been able to obtain possession of the same, and I swear that in each instance all bills of lading contain a specific description of the character and quantity of liquor shipped.

O. F. HALEY.

Subscribed and sworn to before me this 27th day of October, 1909.

[SEAL.]

MARY S. HILL,
Notary Public.

My commission expires Nov. 16, 1911.

I hereby acknowledge service upon me of a copy of this affidavit this 27th day of October, 1909.

J. M. HAYES.

(Attached to said affidavit are sixteen copies of bills of lading issued by the Gulf, Colorado & Santa Fe Railway Company, exactly similar to the blank form hereafter set out, except that the dates are different, the consignee different, and the article and quantity different. The various articles, quantities and consignees are given below: Consignment is to "Order of"

No. 1. Consigned to O. F. Haley Co., Okla City Notify St. Louis Supply Co. 2 c Gin Qt.

No. 2. Consigned to O. F. Haley Co., Okla City Notify St. Louis Supply Co. 2 c Gin Qt.

No. 3. Consigned to O. F. Haley Co., Okla. City Notify St. Louis Supply Co. 2 c Gin Qt.

No. 4. Consigned to O. F. Haley Co. Okla. City Notify St. Louis Supply Co. 2 c Gin Qt.

No. 5. Consigned to O. F. Haley Co., Okla. City Notify St. Louis Supply Co. 2 c Gin Qt.

No. 6. Consigned to O. F. Haley Co. Okla. City Notify Star Transfer Co. 5 c D B Pt Whiskey.

298 No. 7. Consigned to O. F. Haley Co. Okla City Notify Star Transfer Co. 2 Csk W. H. L. Beer

No. 8. Consigned to O. F. Haley Co. Okla City Notify Star Transfer Co. 2 Csk M. H. L. Beer

No. 9. Consigned to O. F. Haley Co. Okla City Notify Star Transfer Co. 2 Csk M. H. L. Beer

Shippers No.
Agents No.

ORDER BILL OF LADING—ORIGINAL.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading,

19.....

at the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER BILL of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless permission is indorsed on this original bill of lading or given in writing by the shipper.

The Rate of Freight from

to										IF Special per	
is in cents per 100 Lbs.										IF Special per	
IF Times 1st	IF 1st Class	IF 2d Class	IF 3d Class	IF 4th Class	IF 5th Class	IF A Class	IF B Class	IF C Class	IF D Class	IF E Class	

(Mail Address—Not for purposes of Delivery.)

Consigned to ORDER OF

Destination, State of County of

Notify State of County of

At Car Initial

Route, Car No.

ORDER BILL OF LADING—ORIGINAL.

Agents No.

RECEIVED, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading.

19

at the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The surrender of this Original ORDER BILL of Lading properly indorsed shall be required before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is indorsed on this original bill of lading or given in writing by the shipper.

The Rate of Freight from

is in cents per 100 Lbs.

IF .. Times 1st	IF 1st Class	IF 2d Class	IF 3d Class	IF 4th Class	IF 5th Class	IF A Class	IF B Class	IF C Class	IF D Class	IF E Class	IF Special per	IF Special per

(Mail Address—Not for purposes of Delivery.)

Consigned to ORDER OF

Destination,

Notify

At

Route,

State of

County of

Car No.

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received \$..... to apply in prepayment of the charges on the property described hereon.

Agent or Cashier.

Per.....
(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

\$.....

Shipper.

Agent.

Per.....

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

Per.....

299

CONDITIONS.

No earlier or partly in post

negligence shall be on the carrier or party in possession.
Sec. 2. In leaving this bill of lading this company

The amount of any loss or damage for which any carrier is liable

Avoid the policies or contracts of insurance.
Sec. 4 All property shall be subject to no

not be held responsible for deviation or unavoidable delays in procuring

The carrier may make a reasonable charge for the detention of any freight and other inward charges including a reasonable charge for storage.

affecting car service or storage.
Property destined to or taken

to do so and a stipulated value of the articles are indicated hereon
Rec. 7. Every party whether principal or agent abjures apostasy

stroyed without compensation. Sec. 8. The owner of con-

Rec. 10. Any alteration, addition or erasure in this bill of lading

and this bill or lading shall be enforceable according to its original tenor.

No. 10. Consigned to O. F. Haley Co. Okla City Notify Star Transfer Co. 2 Csk M. H. L. Beer

No. 11. Consigned to O. F. Haley Co. Okla City Notify Star Transfer Co. 2 Csk M. H. L. Beer

No. 12. Consigned to O. F. Haley Co. Okla City Notify Okla Liq Co. 1 Box Wine.

No. 13. Consigned to O. F. Haley Co. Okla City Notify Okla Liq Co. 1 Box Wine.

No. 14. Consigned to O. F. Haley Co. Okla City Notify Okla Liq Co. 1 Box Wine.

No. 15. Consigned to O. F. Haley Co. Okla City Notify Okla Liq Co. 1 Box Wine.

No. 16. Consigned to O. F. Haley Co. Okla City Notify Okla Liq Co. 1 Box Wine.

And all of said Bills of Lading are endorsed "O. F. Haley Co.")

Endorsed: "I hereby certify that the 16 copies of bills of lading attached hereto are true and correct copies of 16 original bills of lading, made by me and substituted herein in lieu of original bills of lading per court order of Nov. 15, 1909. Harry L. Finley, Clerk. Nov. 19, 1909."

Endorsed: No. 489. The O. F. Haley Co. vs. Chas. N. Haskell et al. Affidavit of O. F. Haley. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

(See following page for blank form bill of lading, marked pages 299, 300.)

301 STATE OF TEXAS,
County of Cooke:

I, O. B. Smith, a resident citizen of Gainesville, Cooke County, Texas, do on my oath say that I am agent for the M. K. & T. Rwy. Co. of Texas at Gainesville, Texas, and have been for a long time past. I am well acquainted in a business way with O. F. Haley Co. at Gainesville, and during the last few years they have done business with the Company which I represent. I have in person received consignments of liquor from the agents and employees of said O. F. Haley Co. and in each and every instance where goods have been delivered by said O. F. Haley Co. to us for transportation, the officers and employees of said O. F. Haley Co. have in each and every instance specifically stated to us the true and exact contents of said consignments, and the Bills of Lading have stated the exact and true character of the contents of the goods so delivered to us for transportation. So far as I know or believe, said O. F. Haley Co., or any of its officers or employees have never evaded or misrepresented to me or the Company I represent, the true character and contents of all packages or goods however prepared for shipment, that have been tendered us. Said O. F. Haley Co. is in the liquor business exclusively, and unless it was some rare exception, such as empty bottles or some character of soft

drinks, our books will show that all other shipments have been for liquors and we have been so informed by said O. F. Haley Co. at the time the goods were tendered to us by O. F. Haley Co. for transportation, have been billed or consigned by them nor have we ever been requested to bill them as potatoes, tomatoes, groceries, dry-
 302 goods, drugs, or any other form of general merchandise, except liquor.

O. B. SMITH.

Sworn to and subscribed before me this the 26th day of October, 1909.

[SEAL.]

R. W. BURRAGE,
Notary Public, Cooke County, Texas.

My commission expires on June 1, 1911.

Service of a copy of this affidavit is hereby acknowledged.

J. M. HAYES.

Endorsed: No. 489. The O. F. Haley Co. vs. Chas. N. Haskell et al. Affidavit of O. B. Smith. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

303 I, C. E. Jackson, a resident of Gainesville, Cooke County, Texas, being duly sworn, hereby make affidavit that I am shipping clerk for the O. F. Haley Company, of Gainesville, Texas. That I have been constantly so employed for the last five years. That I have personally supervised packing and shipping of all consignments made by the O. F. Haley Company, and that I have personally made out all shipping tickets and Bills of Lading covering all shipments made by the said O. F. Haley Company during the entire time that I have been so employed, and that I hereby state, on my oath, that all shipments have been properly described in said Shipping tickets and Bills of Lading. In each case where liquor was shipped the shipping ticket or bills of lading showed it to be liquor, and that I have never misrepresented any shipments made by the O. F. Haley Company.

C. E. JACKSON.

Sworn to and subscribed to before me, this the 26th day of October, 1909.

[SEAL.]

R. W. BURRAGE,
*Notary Public,
 Cooke County, Texas.*

My commission expires June 1, 1911.

Gainesville, Texas, October 26th, Nineteen Hundred and Nine. Notice of service is hereby acknowledged this 27th day of Oct. 1909.

J. M. HAYES.

Endorsed: No. 489. The O. F. Haley Co. v. Chas. N. Haskell et al. Affidavit of C. E. Jackson. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

304 STATE OF TEXAS,
County of Cooke.

I, E. D. White, a resident citizen of Gainesville, Cooke County, Texas, do on my oath say that I am agent for the W. F. Express Company at Gainesville, Texas, and have been for a long time past. I am well acquainted in a business way with O. F. Haley Co., of Gainesville, and during the last few years they have done business with the Company which I represent. I have in person received consignments of liquor from the agents and employees of said O. F. Haley Co. and in each and every instance where goods have been delivered by said O. F. Haley Co. to us for transportation, the officers and employees of said O. F. Haley Co. have in each and every instance specifically stated to us the exact and true character of the contents of the goods so delivered to us for transportation so far as I know or believe, said O. F. Haley Co., or any of its officers or employees has never evaded or misrepresented to me or the Company I represent the true character and contents of all packages or goods however prepared for shipment, that have ever been tendered to us. Said O. F. Haley Co. is in the liquor business exclusively, and unless it has been some rare exception, such as empty bottles or some character of soft drinks, our books will show that all other shipments have been for liquors, and we have been so informed by the said O. F. Haley Co. at the time the goods were tendered to us. No goods have ever at any time been delivered to us by O. F. Haley Co. for transportation, have been billed or consigned by us, nor have we ever been requested to bill them as potatoes, tomatoes, groceries, dry-goods, drugs, or any other form of general merchandise, except liquor.

E. D. WHITE.

Sworn to and subscribed before me this the 26th day of October,
1909.

305 R. W. BURRAGE,
[SEAL.] Notary Public, Cooke County, Texas.

My commission expires June 1, 1911.

Service of a copy of this affidavit is hereby acknowledged.

J. M. HAYES.

Endorsed: No. 489. The O. F. Haley Co. vs. Charles N. Haskell, et al. Affidavit of E. D. White. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

306 STATE OF TEXAS,
County of Cooke:

I, J. H. McMurry, a resident citizen of Gainesville, Cooke County, Texas, do on my oath say that I am agent for the Am. Express Company at Gainesville, Texas, and have been for some time past. I am well acquainted in a business way with the O. F. Haley Co. of Gainesville and during the last few years they have done business

with the Company which I represent I have in person received consignments of liquors from the agents and employees of the said O. F. Haley Co. and in each and every instance where goods have been delivered by said O. F. Haley Co. to us for transportation, the officers and employees of the said O. F. Haley Co. have in each and every instance specifically stated to us the true contents of said consignments and the express receipts and billings have stated the exact and true character of the contents of the goods so delivered to us for transportation so far as I know or believe the said O. F. Haley Co. or any of its officers or employees has never evaded or misrepresented to me or the Company I represent the true character and contents of all packages or goods however prepared for shipment, that has ever been tendered to us. Said O. F. Haley Co. is in the liquor business exclusively and unless it was some rare exception such as empty bottles or some character of soft drinks our books will show that all other shipments have been for liquors and we have been so informed by the said O. F. Haley Co. at the time the goods were tendered to us. No goods that have ever at any time been delivered to us by O. F. Haley Co. for transportation have been billed or consigned by us nor have we ever been requested to bill them as potatoes, tomatoes, groceries, dry-goods, drugs, or any other forms
307 of general merchandise, except liquor.

J. H. McMURRY.

Sworn to and subscribed before me this the 26th day of October, 1909.

[SEAL.]

R. W. BURRAGE,

Notary Public, Cooke County, Texas.

My commission expires June 1, 1911.

Service of a copy of this affidavit is hereby acknowledged.

J. M. HAYES.

Endorsed: No. 489. O. F. Haley Co. v. Chas. N. Haskell, et al. Affidavit of J. H. McMurry. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

308 STATE OF TEXAS,
County of Cooke:

I, F. J. Gates, a resident citizen of Gainesville, Cooke county, Texas, do on my oath say that I am agent for the G. C. & S. F. R'wy Company at Gainesville, Texas, and have been for a long time past. I am well acquainted in a business way with O. F. Haley Co. of Gainesville, and during the last few years they have done business with the company which I represent. I have in person received consignments of liquor from the agents and employees of said O. F. Haley Co., and in each and every instance where goods have been delivered by said O. F. Haley Co. to us for transportation, the officers and employees of said O. F. Haley Co. have in each and every instance specifically stated to us the true contents of said consignments, and the bills of lading have stated the exact and true char-

acter of the contents of the goods so delivered to us for transportation so far as I know or believe, said O. F. Haley Co., or any of its officers or employees have never evaded or misrepresented to me or the Company I represent the true character and contents of all packages or goods however prepared for shipment, that have ever been tendered to us. Said O. F. Haley Co. is in the liquor business exclusively, and unless it was some rare exception, such as empty bottles or some character of soft drinks, our books will show that all other shipments have been for liquors, and we have been so informed by said O. F. Haley Co. at the time the goods were tendered to us. No goods that have ever at any time been delivered to us by O. F. Haley Co. for transportation, have been billed or consigned by them nor have we ever been requested to bill them as potatoes, tomatoes, groceries, dry-goods, drugs, or any other form of general merchandise, except liquor.

F. J. GATES.

Sworn to and subscribed before me, this the 26th day of October, 1909.

[SEAL.]

R. W. BURRAGE,
Notary Public, Cooke County, Texas.

My commission expires on June 1, 1911.

Endorsed: No. 489. The O. F. Haley Co. vs. Chas. N. Haskell et al. Affidavit of F. J. Gates. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

310 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. —. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Complainant,
vs.
CHARLES N. HASKELL et al., Defendants.

Affidavit.

H. D. Garrison, being duly sworn, deposes and says that he is the Sheriff of Oklahoma County, State of Oklahoma, and that it is not true that at any instance when he undertook to take possession of the goods that were seized under search warrants that he delivered any of said goods to any bootlegger or any person, or permitted any person or any bootlegger to have access or possession of any of said goods. That when he entered the warehouses in which the officers had stored said goods he found that many thousands of dollars of the goods had been commingled together, the

marks of identification on many of them torn off, many casks broken into, the contents removed, and that it was impossible for him to identify the goods of one carrier from the goods of another carrier, and in order to assist him to so identify the goods, he permitted certain of the shippers and certain of the consignees to go with him to enable him to restore to the respective carriers the goods that each was entitled to.

H. D. GARRISON.

Subscribed and sworn to before me this 27th day of October, 1909.

[SEAL.]

MARY S. HILL,
Notary Public.

My commission expires Nov. 16, 1911.

311 I hereby acknowledge service upon me of a copy of this affidavit this 27th day of October, 1909.

J. M. HAYES.

Endorsed: No. 489. The O. F. Haley Co. vs. Chas. N. Haskell et al. Affidavit of H. D. Garrison. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

312 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States.

No. 489.

THE O. F. HALEY Co., Complainant,

vs.

CHAS. N. HASKELL, as Governor, et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
County of Logan, ss:

S. W. Fenton, of lawful age, being first duly sworn, on oath says:

That he is one of the defendants in the above and foregoing action, and the same S. W. Fenton who made a certain affidavit heretofore filed herein in resistance to the application for a temporary injunction. Affiant further says that in addition to said former affidavit he now makes this further affidavit as supplementary thereto.

Affiant says that on or about the first day of October, 1909, at which time certain intoxicating liquors were taken and seized from the depot of the M. K. & T. Ry. Co. at Oklahoma City, Oklahoma county, State of Oklahoma, in manner and form as alleged in affiant's former affidavit, a certain lot of intoxicating liquors were also taken and seized under a search and seizure warrant issued by

William H. Zwick, Justice of the Peace of Oklahoma City Township, Oklahoma County, State of Oklahoma, from the depot of the A. T. & S. F. Ry. Co. at said Oklahoma City; that all of said intoxicating liquors so taken from said M. K. & T. Ry. Co. and said

A. T. & S. F. Ry. Co. at said Oklahoma City were by the
313 officers executing said search and seizure warrants placed in storage in a building occupied by the U. S. Loan Company at No. 115 West Grand Avenue in said Oklahoma City, to await the hearing and proceedings on the return of said search and seizure warrants pursuant to Section 6, Article III of Chapter 69 of the Session Laws of 1907-8; that affiant was present at the hearing so had on the returns to said search and seizure warrants and was also present when H. D. Garrison, as Sheriff of Oklahoma County, State of Oklahoma, assumed to execute the order of restitution made and entered in said causes and referred to in complainant's bill; that then and there when the said H. D. Garrison, as such Sheriff, so assumed to execute said order of restitution so made in said matters by the said William H. Zwick, as such Justice of the Peace, a certain person who then and there introduced himself as Mr. Dreeben of the Cooke County Liquor Company of Gainesville, Texas, introduced himself to affiant and gave affiant his business card, which said business card is in words and figures as follows:

Lemp,
St. Louis.

with
The Cooke County Liquor Company,
Schwartz & Dreeben, Prop's.
Distributers of
Lemp St. Louis Beer,
Gainesville, Tex.

That at the time the said Dreeben so introduced himself to affiant he informed affiant that his business telephone number in Gainesville, Texas, was No. 194, which said number affiant then and there wrote down on said business card as a memorandum. That the said Dreeben then and there assumed to represent and act for the said Schwartz and Dreeben with reference to all of said intoxicating liquors so being delivered back by the said H. D. Garrison under and pursuant to said order of restitution made and entered
314 by the said William H. Zwick, as such Justice of the Peace and which were claimed by the said Schwartz and Dreeben, and that the said Dreeben then and there received from the said H. D. Garrison, as such Sheriff, a large number of boxes of said intoxicating liquors for and on behalf of the said Schwartz & Dreeben.

Affiant further states that at the same time the said H. D. Garrison, as such Sheriff so assumed to execute said order of restitution so made and entered in said search and seizure proceedings by the said Zwick, as such Justice of the Peace with reference to said intoxicating liquors hereinabove referred to, one Dick Hudson

then and there appeared and introduced himself to this affiant, the representative of The O. F. Haley Company of Gainesville, Texas, and he the said Dick Hudson, did then and there, as such representative of the said The O. F. Haley Company, of Gainesville, Texas, receive from the said H. D. Garrison, as such Sheriff, a large number of boxes of said intoxicating liquors; that the said Dick Hudson then and there when he so received from the said H. D. Garrison said boxes of intoxicating liquors, began to remove them from, and did in fact remove from a number of said boxes, the tag or card containing the name and address of the consignee, and in lieu thereof tacked thereon or attached thereto another card upon which was printed, "O. F. Haley Company, Gainesville, Texas." That the said Dick Hudson so continued to retag said boxes until this affiant intervened and remonstrated on the ground that said order of restitution so being then and there executed by the said H. D. Garrison, as such Sheriff, ordered and directed that said intoxicating liquors be by the said H. D. Garrison, delivered back to the common carrier from whom they had been taken, and thereupon, upon such intervention on the part of this affiant, the said Dick Hudson ceased so retagging said boxes of intoxicating liquors.

This affiant further says that among said boxes of intoxicating liquors so received by the said Dreeben and the said

Dick Hudson from the said H. D. Garrison, as such Sheriff, in manner and form as hereinabove stated, there were a number of boxes which contained no brand or label disclosing the contents of said boxes to be intoxicating liquors, but that on the contrary, a number of said boxes were labeled and branded, "Bull Durham Tobacco," "Arm & Hammer Brand Soda," "Bartlett Pears," "Liberty Brand Crackers," "Club House Cheese," etc. Affiant further says that he then and there called the attention of W. D. Turner, T. L. Hendricks and G. S. Peacock to said boxes of said intoxicating liquors which were so mis-branded and labeled.

Further affiant saith not.

S. W. FENTON.

Subscribed and sworn to before me this 28th day of Oct. 1909.

[SEAL.]

F. L. WILLIAMS,
Notary Public.

My comm. exp. March 5, 1910.

Endorsed: Filed Oct. 28, 1909. Harry L. Finley, Clerk.

316 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States.

No. 489.

THE O. F. HALEY Co., Complainant,
 vs.

CHAS. N. HASKELL, as Governor, et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
County of Logan, ss:

T. E. Hendricks, of lawful age, being first duly sworn, on oath says:

That he has read the two affidavits of S. W. Fenton made and filed in the above named cause; that he well remembers the occasion referred to in the second affidavit made by the said S. W. Fenton with reference to the execution by H. D. Garrison, Sheriff of Oklahoma County, State of Oklahoma, of the order of William H. Zwick, Justice of the Peace of Oklahoma City Township, Oklahoma County, State of Oklahoma, directing that the intoxicating liquors referred to in the said S. W. Fenton's affidavits be re-delivered to the common carriers in said Oklahoma City, from which said carriers they had been taken upon search and seizure warrants duly issued by the said William H. Zwick, as such Justice of the Peace, prior thereto; that affiant well remembers that the said S. W. Fenton did on said occasion call affiant's attention to certain boxes of said intoxicating liquors which were mis-branded and mis-labeled in manner and form stated in the said Fenton's affidavits, to-wit: Branded and labeled, "Bull Durham Tobacco," and "Bartlett Pears."

317 Affiant further states that he personally examined into one of said packages marked Bartlett Pears and his investigation so made disclosed the fact that said package contained Gin in bottles.

Further affiant saith not.

T. E. HENDRICKS.

Subscribed and sworn to before me this 28th day of October, 1909.

[SEAL.]

F. L. WILLIAMS,
Notary Public.

My comm. exp. March 5, 1910.

Endorsed: Filed Oct. 28, 1909. Harry L. Finley, Clerk.

318 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States.

No. 489.

THE O. F. HALEY COMPANY, Complainant,
 vs.

CHAS. N. HASKELL, as Governor, et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction

STATE OF OKLAHOMA,
County of Oklahoma, ss:

R. A. Young, being first duly sworn, on oath says:

That he is a special officer of the city of Oklahoma, County of Oklahoma, State of Oklahoma. That he was present at a car on the Atchison, Topeka and Santa Fe Railroad, in the yards of said railroad company, at Oklahoma City, Oklahoma, the day that H. D. Garrison, as Sheriff of Oklahoma County, returned to the railroad company, under an alleged returning order from the court of William H. Zwick, certain liquors.

That affiant saw parties, who are strangers to him, enter the car and proceed to take possession of said liquor, so returned by the said Harvey D. Garrison, Sheriff.

Affiant further says that he heard S. W. Fenton remonstrate with the men against taking possession of said goods, claiming that the order of the sheriff was to return the goods to the railroad company or carriers, and not to any individual or firms.

Affiant further says that he saw one of these men above mentioned, tear off the tags or labels that were on the boxes of liquor and placed thereon, O. F. Haley & Co. tags.

319 Affiant further says that a number of the boxes in said car, which contained intoxicating liquors, contained no brand or label disclosing the contents of said box to be intoxicating liquors but on the contrary a number of said boxes were labeled and branded "Bull Durham Tobacco", "Tomatoes", "Arm & Hammer Brand Soda", "Bartlett Pears", "Liberty Brand Crackers", "Club House Cheese", etc.

Affiant further says that these same boxes, heretofore mentioned were re-taken by the state officers and placed in the warehouse at #5 West Main St., Oklahoma City, Oklahoma. That he saw some of the misbranded boxes heretofore mentioned, opened. Some of the said boxes contained wine, gin and whisky, and further affiant says not.

R. A. YOUNG.

Subscribed and sworn to before me this 27 day of Oct. 1909.

[SEAL.]

R. WEESNER,

Notary Public.

My commission expires Jan'y 25th, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

320 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States.

No. 489.

THE O. F. HALEY COMPANY, Complainant,
vs.

CHAS. N. HASKELL, as Governor, et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
County of Logan, ss:

J. M. Hays, being duly sworn upon his oath, states in reply to an affidavit of George H. Giddings, one of the solicitors of the complainants in the above entitled cause, that he, affiant, went to Oklahoma City on the evening of October 26, 1909, and made a thorough examination with reference to the truth or falsity of the report, as testified to in the affidavit of the said George H. Giddings.

Affiant says that he learns from employees that there were four cases of whiskey seized on October 26, 1909; three of said cases of whiskey being seized by Policeman Young from a dray, while in an alley delivering said liquor to a bootlegging establishment; the other case of whiskey being seized by special officer Peacock from a dray while being carried to a bootlegging establishment.

Affiant further says that he is informed and believes, and so states the fact to be, that the rumor is absolutely false in regard to the seizure of a certain shipment of intoxicating liquors, made
321 by these complainants to certain consumers in Oklahoma City, while the same was in the hands of the carrier, and before the surrender of the bill of lading, and delivered to the consignee.

J. M. HAYES.

Subscribed and sworn to before me this 27th day of October, 1909.

[SEAL.]

F. L. WILLIAMS,

Notary Public.

My commission expires March 5, 1910.

GIDDINGS & GIDDINGS.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

322 UNITED STATES OF AMERICA.

—, *Western District, ss:*

In the Circuit Court of the United States Within and for Said District.

No. —.

THE O. F. HALEY Co., Complainant,

vs.

CHAS. N. HASKELL et al., Defendants.

Affidavit in Resistance for Temporary Injunction.

STATE OF OKLAHOMA,

County of Logan, ss:

J. M. Hayes, being first duly sworn on oath states that the Milwaukee Supply Company, of Oklahoma City, Oklahoma, has a wholesale liquor dealer's license and a retail liquor dealer's license as shown by the record ten on page 158, of the internal revenue collector's record at Leavenworth Kansas the following is copy of said record ten page 158, Milwaukee Supply Company, N. Melton and L. Smith W. L. D. Oklahoma City, July, 1909, date of payment August 7th, 1909 Stamp No. 402 location of business, S. Fe. On page 158, Milwaukee Supply Company R. L. D. Oklahoma City. July 25th, Amount of taxes \$25, date of payment of taxes August 7th, 1909, No. of stamp 18601, location of business, S. Fe. Claimant further says that on page 72 of record ten of the Internal Revenue Office the St. Louis Supply Company, N. Edlestein and O. S. Jones, W. L. D. Oklahoma City, July, 1909, amount of tax \$100, date of payment August 2, 1909, No. of tax 400, location of business, S. Fe. On page 72 of same Company has a R. L. D. tax for which they paid \$25, on August 4, 1909 No. of said tax being 18504, and the location of business S. Fe.

J. M. HAYES.

Subscribed and sworn to before me this 26th day of October, 1909.

[SEAL.]

F. L. WILLIAMS, N. P.

My com. ex. March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

324 UNITED STATES OF AMERICA,
State of Oklahoma, Western District:

In the Circuit Court of the United States Within and for Said
District.

No. 489.

THE O. F. HALEY COMPANY, Complainant,

vs.

CHAS. N. HASKELL et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
Logan County, ss:

W. D. Turner being first duly sworn on oath states, that he was an attendant as an employee at the time of the seizure of liquors described in complainant's bill of complaint.

Affiant says that said seizures were made by an officer and under and by virtue of a search and seizure warrant issued out of a court of competent jurisdiction in Oklahoma City.

Affiant further says that he took particular notice, and examined a great many of the boxes and barrels in which liquors were seized from said complainants, and that a great many of said boxes had no marks whatever upon them to designate what was the contents thereof, and a great many more were marked "Tomatoes," "Bull Durham Tobacco," "Liberty Brand Crackers," "Arm & Hammer Brand Soda," "Club House Cherries," etc. and other false and fictitious labels.

W. D. TURNER.

Subscribed and sworn to before me this 26th day of October, 1909.

[SEAL.]

F. L. WILLIAMS,
Notary Public.

My commission expires March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

325 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States Within and for Said
District.

No. 489.

THE O. F. HALEY COMPANY, Complainants,
vs.
CHAS. N. HASKELL et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
Logan County, ss:

G. F. Caffey of lawful age, being first duly sworn on oath, says that affiant is one of the defendants in the above and foregoing action, and that he is a regularly elected constable for Oklahoma City, Oklahoma County, Oklahoma.

Affiant further says that he never has threatened or in any manner declared or indicated an intention on his part to take and seize or cause to be taken and seized, any liquor shipped into the State of Oklahoma by complainant, or any other person in manner and form as alleged in complainant's bill, except by due process of law, under a search and seizure warrant, issued by some Justice of the Peace or other judicial officer of the State of Oklahoma, upon proper complaint, and after such Justice of the Peace or other judicial officer of the State of Oklahoma has found reasonable grounds to exist for the issuance of such warrant and that affiant does not now intend or propose, or never has intended or proposed, and does not expect that he ever will intend to propose to proceed in such matters other than according to the orderly and legal manner, provided by sections 5 and 6, Article 3, Chapter 69 of the Session Laws of 1907-8, of the State of Oklahoma.

G. F. CAFFEY.

Subscribed and sworn to before me this 26th day of October, 1909.

[SEAL.]

F. L. WILLIAMS,
Notary Public.

My com. ex. March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

26 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

in the Circuit Court of the United States Within and for Said
 District.

No. 489.

THE O. F. HALEY COMPANY, Complainant,

vs.

CHAS. N. HASKELL et al., Defendants.

ffidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
Logan County, ss:

F. F. Cain, of lawful age, being first duly sworn on oath says:
 That affiant is one of the defendants in the above and foregoing
 action, that on or about the 27th day of September, 1909, he was
 in Oklahoma City, Oklahoma County, State of Oklahoma, and has
 personal knowledge of the execution of a search and seizure warrant
 issued by Wm. H. Zwick, Justice of the Peace, within and for Okla-
 homa City, Oklahoma County, State of Oklahoma, in a certain cause
 then and there brought and pending before the said Wm. H. Zwick,
 as such Justice of the Peace under and by virtue of sections 5 and 6,
 Article 3, and Chapter 69 of the Session Laws of 1907-8.

That certain of the liquors then and there taken and seized by
 the officers under said search and seizure warrant are a portion of the
 same liquors referred to in complainant's bill as having been by
 complainant shipped into the State of Oklahoma in manner and
 form as alleged in said bill, and that when so taken and seized by
 said officers by virtue of said search and seizure warrant, some of
 said portion of said liquors referred to in complainant's said bill
 were in boxes which contained no marks, brands or labels showing
 the true character of the contents thereof, but which said boxes were

on the contrary plainly marked and branded, as follows:
 27 "Bull Durham Tobacco", "Tomatoes", "Liberty Brand
 Crackers", "Arm and Hammer Brand Soda", "Club House
 Cherries", "Octagonal Soap", etc.

Affiant further says that to his own personal knowledge, all of the
 liquors referred to in complainant's bill, that were taken and seized
 at Oklahoma City, Oklahoma County, State of Oklahoma, were taken
 and seized by an officer, De Jure, under the laws of the State of
 Oklahoma, upon and by virtue of a search and seizure warrant issued
 by a Justice of the Peace, or other judicial officer of the State of
 Oklahoma under and pursuant to sections 5 and 6, Article 3, Chapter
 69, of the Session Laws of 1907-8.

Affiant further says that he never has threatened or in any man-
 ner declared or indicated an intention on his part to take and seize
 or cause to be taken and seized, any liquor shipped into the State

of Oklahoma by complainant, or any other person in manner and form as alleged in complainant's bill, except by due process of law, under a search and seizure warrant, issued by some Justice of the Peace or other judicial officer of the State of Oklahoma upon proper complaint, and after such Justice of the Peace or other judicial officer of the State of Oklahoma has found reasonable grounds to exist for the issuance of such warrant; and that affiant does not now intend or propose, and never has intended or proposed, and does not expect that he ever will intend or propose to proceed in such matters other than according to the orderly and legal manner, provided by said sections 5 and 6, Article 3, Chapter 69, of the session laws of 1907-8, of the State of Oklahoma.

F. F. CAIN.

Subscribed and sworn to before me this 26th day of October, 1909.

[SEAL.]

F. L. WILLIAMS,
Notary Public.

My com. ex. Mar. 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

328 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States Within and for Said District.

No. 489.

O. F. HALEY COMPANY, Complainant,

vs.

CHAS. N. HASKELL et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
Logan County, ss:

S. W. Stone, of lawful age, being first duly sworn on oath says that affiant is one of the defendants in the above and foregoing action; affiant says that he is the Superintendent of the State Agency of the State of Oklahoma, located at Guthrie, Oklahoma; affiant says that it is not true as alleged in complainant's bill of complaint that he is without bond, but instead thereof affiant says that he is under a bond of Twenty-five thousand Dollars, for the faithful performance of his duties.

Affiant further says that he never has threatened or in any manner declared or indicated an intention on his part to take and seize or cause to be taken and seized any liquors shipped into the State of Oklahoma by complainant, or any other person, in manner and form as alleged in complainant's bill, except by due process of law,

under a search and seizure warrant issued by some Justice of the Peace or other judicial officer of the State of Oklahoma upon proper complaint, and after such Justice of the Peace or other judicial officer of the State of Oklahoma has found reasonable grounds to exist for the issuance of such warrant and that affiant does not now intend or propose, or never has intended or proposed, and does not expect that he ever will intend or propose to proceed in such matters other than according to the orderly and legal manner provided by Sections 1 and 6, Article 3, Chapter 69, of the Session Laws of 1907-8 of the State of Oklahoma.

S. W. STONE.

Subscribed and sworn to before me this 26th day of October, 1909.

[SEAL.]

F. L. WILLIAMS,

Notary Public.

My commission expires March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

29 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western
District of Oklahoma.

No. 489. In Equity.

THE O. F. HALEY COMPANY, Complainants,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, Defendants.

Affidavit.

STATE OF OKLAHOMA,
County of Logan, ss:

J. M. Hayes being duly sworn on oath, states, that he is assistant counsel to the Governor of the State of Oklahoma; that he appeared by his employed assistant, Lee F. Wilson, in the trial of cases No. 1375, 1393, 1394, 1397, 1401, 1434, 1441 and 1502 before one Wm. H. Zwick, an acting Justice of the Peace in and for Oklahoma City, P. P. Oklahoma County, Oklahoma.

That affiant caused to be filed at the rendition of the judgment in the above entitled cases a notice of appeal as provided by the statutes of the State of Oklahoma, and appeared in person before said W. H. Zwick and presented thoughts and arguments on the right of the State to appeal from the decisions of the said Wm. H. Zwick; that it was the judgment of the court that the State was entitled to an

appeal to the County court clerk of said Oklahoma County, State of Oklahoma; that the said plaintiff, the State of Oklahoma, would be required to give bonds; that at the time that the said Wm. H. Zwick rendered said opinion he at the request of George H. Giddings, who claimed to represent the impleaders in said cases above mentioned and who are complainants in this case; that he the said Wm. H. Zwick, issued an order, a written order direct to H. D. Garrison, Sheriff of Oklahoma County, State of Oklahoma, to take the liquors seized and adjudicated in the above numbered cases, and turned said liquors over to the common carriers;

Affiant further says that he then and there entered his objections to said order by the said Wm. H. Zwick, as the same was contrary to law, as the statutes of the State of Oklahoma permits the party desiring an appeal, ten days in which to perfect the same.

Affiant further says that the sheriff of Oklahoma county did take portions of said liquors over the protests of the affiant and the officers who had charge of said liquors and that he the sheriff delivered the liquors and returned the same to the carriers, that a part of said liquors was taken in charge of by claimant; that affiant was informed and believes the fact to be that various parties were present when said goods were delivered to the carrier by the sheriff, ready to distribute said liquors to the various bootlegging joints in the city of Oklahoma, and State of Oklahoma, contrary to the statutes of the State of Oklahoma;

Affiant says that upon receiving said notice and information that he O. K.'d and provided a complaint, and that he is informed and believes a search and seizure warrant was issued, and said goods again seized by the officers serving said search and seizure warrant.

J. M. HAYES.

Subscribed and sworn to before me this 26th day of October, 1909.

[SEAL.]

F. L. WILLIAMS,

Notary Public.

My commission expires March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

331 UNITED STATES OF AMERICA.

State of Oklahoma, Western District, ss:

In the Circuit Court of the United States.

No. 489.

THE O. F. HALEY COMPANY, Complainant,

vs.

CHAS. N. HASKELL et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,

Logan County, ss:

G. F. Caffey, being first duly sworn states, that he is one of the defendants in the above and foregoing action, and that he is a regu

larly elected constable for Oklahoma City, Oklahoma County, Oklahoma.

Affiant further says that he never received a search and seizure warrant on the M. K. & T. Railroad freight house or on any firm, corporation or individual until September 21st, 1909; that he never during the months of June, July, August, and up to September 20, 1909, received any writs, search and seizure writs of any kind on the M. K. & T. Ry. Co.

Affiant further says that according to his best knowledge and belief that the first seizure was on or about September 28th, 1909; that he made said seizure in compliance with an order from the Justice of the Peace Court of Wm. H. Zwick.

Affiant further says that he has never threatened or in any manner declared or indicated an intention on his part to take and seize or cause to be taken and seized any liquor shipped into the State of Oklahoma by complainant, or any other person in manner and form

as alleged in complainant's bill, except by due process of law under a search and seizure warrant issued by some Justice of the Peace or judicial officer of the State of Oklahoma, upon proper complaint and after such Justice of the Peace, or such judicial officer of the State of Oklahoma, has found reasonable grounds existing for the issuance of such warrant, and that affiant does not now intend, or propose, or never has intended or proposed, and does not expect that he ever will intend or propose that he will proceed in such matters other than according to the ordinary and legal manner provided by Sections 5 and 6 of Article III, Chapter 69 of the Session Laws of 1907-8 of the State of Oklahoma.

G. F. CAFFEY.

Subscribed and sworn to before me this 26th day of Oct. 1909.

[SEAL.]

F. L. WILLIAMS,

Notary Public.

My comm. Exp. March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

333 UNITED STATES OF AMERICA.

State of Oklahoma, Western District:

In the Circuit Court of the United States Within and for Said District.

No. 489.

THE O. F. HALEY COMPANY, Complainants,

vs.

CHAS. N. HASKELL et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,

Logan County, ss:

Wm. Murdock, of lawful age, being first duly sworn, on oath says that he has participated as an employee, in the seizures of liquors

from the Missouri, Kansas & Texas Railway Company at Oklahoma City; that the first time said seizure was made of which affiant took part was on October 1, 1909; that the following is a copy of a list of the liquors and the parties to whom said liquors were consigned, given affiant by C. L. McGuire, Freight agent of the Missouri, Kansas & Texas Railway Company, at Oklahoma City:

Taken from M. K. & T. Freight House Oct. 1, 1909:

One barrel of beer marked T. J. Davies 313 West 5th Okla. City.

One barrel of beer marked Fred Perry 727 West Calif Okla. City.

Five boxes of whiskey F. C. Herneman, Oklahoma City.

Four boxes of whiskey marked Jim Henly, Oklahoma City.

Three cases of Green River whiskey marked Milwaukee Supply Co. City.

Eighteen cases of Old Prentice marked Ned J. Milton, City.

Thirty-nine cases of Log Cabin marked St. Louis Supply Co. City.

One barrel of Blue Ribbon beer marked Milwaukee Supply Co. City.

Two boxes of whiskey marked S/O Nfy Abe Jackson, Oklahoma City.

One box of whiskey marked St. Louis Supply Co. City.

Twenty-four cases M. & M. whiskey marked S/O Nfy Okla. Distb. Co. City.

Twenty-one cases whiskey marked S/O Nfy St. Louis Supply Co. City.

Five cases Old Crow whiskey marked Holloway-McCarty, City.

Ten cases of whiskey marked Holloway-McCarty, City.

Two cases of wine marked H. Horman, Oklahoma City.

Two cases of whiskey marked S/O Nfy U. S. Clements, Okla. City.

Two cases of whiskey marked S/O Nfy C. Stiver, Oklahoma City.

Two cases of whiskey marked S/O Nfy John Ashby, Oklahoma City.

Two cases of whiskey marked S/O Nfy Bob Conway, Oklahoma City.

Two cases of whiskey marked S/O Nfy C. Vogel, Oklahoma City.

Four cases of whiskey marked S/O Nfy Lewis McHenry, Okla. City.

Eight bbls. of whiskey marked S/O Nfy Milwaukee Supply Co. City.

334 Affiant further states that the foregoing list of consignees as above set forth are all or nearly all known as dealers and dispensers of intoxicating liquors in violation of Chapter 69 of the revised statutes of the State of Oklahoma and are known and reputed to be bootleggers and wholesale bootleggers in the City of Oklahoma City, Oklahoma County, and State of Oklahoma. Affiant further says that certain persons whose business and occupation is that of draymen in the City of Oklahoma, County of Oklahoma, and State of Oklahoma, have and do receive goods for the above parties upon order issued by parties as contained in the list set forth in this affidavit, and thereupon receipt for the same, in their own or fictitious names.

Affiant further says that on October 1, 1909 and prior thereto that the said Missouri, Kansas & Texas Railway Company through their

agent, C. L. McGuire, at Oklahoma City, has colluded with the above consignees to secret and hide from the view of the officers aforesaid shipments and permitted draymen to enter cars and take therefrom liquors so shipped at unseemingly hours at night for the express purpose of assisting said draymen to deliver said liquors contrary to the Statutes of the State of Oklahoma.

WM. MURDOCK.

Subscribed and sworn to before me this 26th day of October, 1909.

[SEAL.]

F. L. WILLIAMS,

Notary Public.

My commission expires March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

335 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States Within and for Said District.

No. 489.

THE O. F. HALEY COMPANY, Complainants,

vs.

CHARLES N. HASKELL et al., Defendants.

Affidavit in Resistance to Application for Temporary Injunction.

STATE OF OKLAHOMA,
Logan County, ss:

S. W. Fenton, of lawful age, being first duly sworn on oath says that he has participated as an employee, in the seizures of liquors from the Missouri, Kansas & Texas Railway Company at Oklahoma City; that the first time said seizure was made of which affiant took part was on October 1, 1909; that the following is a copy of the list of the liquors and the parties to whom said liquors were consigned, given affiant by C. L. McGuire, Freight Agent of the Missouri, Kansas & Texas Railway Company, at Oklahoma City:

Taken from M. K. & T. freight house Oct. 1, 1909.

One barrel of beer marked T. J. Davies #313 West 5th st. Okla. City.

One barrel of beer marked Fred Petry #727 West Calif. Okla. City.

Five boxes of whiskey marked F. C. Herneman, Oklahoma City.

Four boxes of whiskey marked Jim Henly, Oklahoma City.

Three cases of Green River whiskey marked Milwaukee Supply Co. City.

Eighteen cases of Old Prentice marked Ned. J. Nilton, City.

Thirty-nine cases of Log Cabin marked S. Louis Supply Co. City.

One barrel of Blue Ribbon beer marked Milwaukee Supply Co. City.

Two boxes of whiskey marked S/O Nfy Abe Jackson, Oklahoma City.

One box of whiskey marked St. Louis Supply Co. City.

Twenty-four cases M. & M. whiskey marked S/O Nfy Okla. Distrib. Co. City.

Twenty-one cases whiskey marked S/O Nfy St. Louis Supply Co. City.

Five cases Old Crow whiskey marked Holloway-McCarty, City.

Ten cases of whiskey marked Holloway-McCarty, City.

Two cases of wine marked H. Horman, Oklahoma City.

Two cases of whiskey marked S/O Nfy U. S. Clements, Okla. City.

Two cases of whiskey marked S/O Nfy C. Stivers, Oklahoma City.

Two cases of whiskey marked S/O Nfy John Ashby, Okla. City.

Two cases of whiskey marked S/O Nfy Bob Conway, Oklahoma City.

Two cases of whiskey marked S/O Nfy C. Vogel, Oklahoma City.

Four cases of whiskey marked S/O Nfy Lewis McHenry, Oklahoma City.

Eight bbls. of whiskey marked S/O Nfy Milwaukee Supply Co. City.

336 Affiant further states that the foregoing list of consignees as above set forth are all or nearly all known as dealers and dispensers of intoxicating liquors in violation of Chapter 69 of the revised statutes of the State of Oklahoma and are known and are reputed to be bootleggers and wholesale bootleggers in the City of Oklahoma, County of Oklahoma, and State of Oklahoma. Affiant further says that certain persons whose business and occupation is that of draymen in the City of Oklahoma, County of Oklahoma, and State of Oklahoma, have and do receive goods for the above parties upon order issued by parties as contained in the list set forth in this affidavit, and thereupon receipt for the same, in their own or fictitious names.

Affiant further says that on October 1, 1909 and prior thereto that the said Missouri, Kansas & Texas Railway Company through their agent C. L. McGuire at Oklahoma City has colluded with the above consignees to secrete and hide from the view of the officers aforesaid shipments and permitted draymen to enter cars and take therefrom liquors so shipped at unseemingly hours at night for the express purpose of assisting said draymen to deliver said liquors contrary to the statutes of the State of Oklahoma.

S. W. FENTON.

Subscribed and sworn to before me this 26th day of October, 1909.

[SEAL.]

F. L. WILLIAMS,
Notary Public.

My commission expires March 5, 1910.

Filed Oct. 28, 1909. Harry L. Finley, Clerk.

Endorsed: No. 489. U. S. of America, State of Oklahoma, Western District. In the Circuit Court of the United States. O. F. Haley Co. v. Chas. N. Haskell, et al. Affidavits in resistance to applications for Temporary Restraining Order. Filed Oct. 28, 1909. Harry L. Finley, Clerk.

337 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States Within and for Said District.

No. 489. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Complainant,
vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, Defendants.

Appearance of Fred S. Caldwell as Attorney Pro Se and Other Defendants.

To Harry L. Finley, Clerk of the Honorable Circuit Court of the United States within and for the Western District of Oklahoma:

You will please enter my appearance as attorney of record for all of the defendants in the above named cause.

FRED S. CALDWELL,
Counsel to the Governor.

Endorsed: No. 489. U. S. of America, State of Oklahoma, Western District. In the Circuit Court of the United States. The O. F. Haley Co. vs. C. N. Haskell. Appearance of Fred S. Caldwell as attorney Pro Se and other Defendants. Filed Nov. 1, 1909. Harry L. Finley, Clerk.

338 United States Circuit Court, Western District of Oklahoma,
Special Guthrie Term, 1909, Thursday, November 4th,
1909.

489.

O. F. HALEY Co., Complainant,

vs.

C. N. HASKELL et al., Defendants.

Now on this November 4th, 1909, this cause comes on for hearing upon the application of complainant for a temporary injunction.

tion. The complainant appears by its attorneys, Giddings & Ciddings, and the defendants appear by their attorney, Fred S. Caldwell.

Thereupon, argument of counsel is heard upon the said application, and the court being fully advised, it is ordered that the application of complainant, be and the same is hereby denied without prejudice to filing another application for a temporary injunction herein. It is further ordered that complainant have leave to file an amended bill herein.

339 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. 489. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Complainant,
vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensing Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Defendants.

Amended Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States for the Western District of the State of Oklahoma:

Comes now The O. F. Haley Company, a corporation, and citizen and inhabitant of the United States and of the State of Texas, residing at Gainesville, in the said State of Texas, and by leave of the Court, amends their Original Bill of Complaint against Charles N. Haskell, S. W. Fenton, Fred S. Caldwell, John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, S. W. Fenton, F. F. Cain, William Murdock and B. J. Waugh, defendants above named, occupying the official positions hereinafter more fully set forth, all of whom are citizens, residents and inhabitants of the State of Oklahoma in the Western District thereof, and complain of said defendants and say:

I.

That your orator is engaged in business as dealer in alcoholic and intoxicating liquors, and has its office and place of business
340 in the city of Gainesville, County of Cooke, and State of Texas, and that they have built up and now enjoy a large and lucrative business in the sale of such liquors in the State of Texas, and a part of their business consists, in a large part, in the sale of liquors in the State of Texas, to customers residing outside

the State of Texas, including customers of the State of Oklahoma. That its principal method and custom of making shipments into various places, including the State of Oklahoma, is to receive mail orders for said shipments direct from their customers outside of the State for sales of liquors to be made in Texas, and after said orders are accepted by your orator to deliver said liquors to the Gulf, Colorado & Santa Fe Railway Company, The Atchison, Topeka & Santa Fe Railway Company, the Missouri, Kansas & Texas Railway Company, and the Wells Fargo & Company's Express and other common carriers at Gainesville, the shipping point in said State of Texas for transportation from said point to the various points in the State of Oklahoma where said customers reside, the said common carriers agreeing to transport said liquors by interstate shipment from Gainesville to said points in Oklahoma, and there to deliver to said customers in Oklahoma the said liquors. And in all cases wherein said liquors are shipped, as aforesaid, from said point in Texas to Oklahoma the sales are made outside the State of Oklahoma to be delivered to the consignees in the State of Oklahoma by the carrier aforesaid.

Your orator further shows that their custom is, after delivering the said liquors to the railways and express companies for shipment as aforesaid, to said point in the State of Oklahoma, to receive from the carrier a bill of lading, which bill of lading is generally made out in the following form, and to forward said bill of lading to some bank or responsible person to be delivered to the purchaser upon payment of a draft for the purchase price
 341 which is attached to said bill of lading, the bill of lading generally used being in substance and form about as follows:

"Received — in apparent good order, the following orders marked — to be delivered in like good order. Gainesville, Texas, —. By — Railway. To shipper's order. Notify —. Marks —. No. —. Article —. Freight prepaid."

The railway company or other carrier filling in the blanks so as to agree with the dates, names of purchaser, character of goods and the name of the consignee to be notified as they are shown, and that the custom and understanding between the parties to said transaction is that it gives to the shipper the right to stop said goods at any time before the said goods are delivered to the said purchasers at their destination in Oklahoma, and before the surrender of the bill of lading and the said goods are not delivered to the said purchaser or consignee until they arrive at their said destination and surrender of said bill of lading. Each box is plainly marked thereon with the name and address of the consignees.

Your orator further shows that at this time complainants have many orders for said goods to be sold in Texas and shipped by carrier, as aforesaid, to Oklahoma, at various points therein, to be delivered there to the consignees in the manner and form hereinbefore set out, and their legitimate profits on said sales so made in Texas for shipments to be made by them into the State of Oklahoma will be largely in excess of five thousand dollars (\$5000.00), and they have

accepted said orders and expect in the proper and legitimate exercise of its right to engage in commerce with the citizens of Oklahoma to continue said business and their said profits, and to continue to accept orders at their said office in Gainesville for sales in Texas and deliveries in Oklahoma, as aforesaid, and that they are not participating in any unlawful sale of intoxicating liquors in the State of Oklahoma, but are only engaged in their said legitimate business of engaging in interstate commerce as aforesaid, and said goods

342 are not shipped for the purpose of being used for any unlawful purpose or for the purpose of being bartered, sold or given away in the State of Oklahoma.

II.

Your orator further shows that the defendant Charles N. Haskell is the duly qualified and elected governor of the State of Oklahoma, and as such he is the head of the executive department of said State. That the defendant Caldwell is the duly appointed counsel to the governor. That the defendant, John Hayes, is the duly appointed assistant counsel to the governor; that the defendants Caffey, Farrett and Queenan are duly elected and qualified constables in Oklahoma City in Oklahoma in said state; that the defendant Stone, is the duly appointed dispensary agent for the State of Oklahoma; and the defendants Waugh, Fenton and Murdock and Cain all are claiming to be some kind of state officer employed by the defendants Haskell, Stone, Caldwell and Hayes, and acting under and pursuant to their direction, control and supervision in the commission of the wrongs and trespasses hereinafter more fully set out. That said Haskell, Stone, Caldwell and Hayes, claiming to be enforcing the provisions of a certain act of the legislature of the State of Oklahoma, known as the "Billups Bill," and otherwise known as the "Enforcing Act," which alleged bill has for its object, or claims to have for its object the prohibition of the bartering, selling or giving away of intoxicating liquors in the State of Oklahoma and the enforcement of same, have instructed the other defendants herein, and many other and numerous parties whose names are unknown to these complainants, that all shipments of intoxicating liquors made in the manner and form hereinbefore set out are illegal and in violation of said Enforcing Act and that said alleged act of the Oklahoma legislature prohibiting the bartering, selling or giving away of intoxicating liquors applies to and included within its provisions all shipments of liquor which are known as interstate shipments while same

343 are still in the hands of the carrier for transportation and delivery before surrender of the bill of lading and delivery to the consignees and made in the manner and form hereinbefore set out; and said Haskell, Stone, Caldwell and Hayes, and their other agents, acting under their instructions, directions and orders, have ordered, authorized and directed said Waugh, Cain, Fenton, Murdock, and numerous others whose names are unknown to complainant, to seize and confiscate and appropriate to their own use and to the use of the State of Oklahoma all liquors so shipped by complainants in the manner and form hereinbefore set out while the same are

in the hands of the railway companies in the State of Oklahoma, and before delivery to the consignees as aforesaid, and while in course of transportation, as aforesaid, whereby it is their purpose and intention to deprive complainant of the possession and value of said goods, and prevent them from engaging further in the business of making interstate shipments, as hereinbefore described.

III.

That heretofore, and on divers dates and occasions during the months of June, July, August, September, and October, 1909, complainants, pursuant to their said method of doing business as aforesaid, and following out their right to engage in legitimate interstate commerce with the citizens of Oklahoma did ship from the State of Texas to many parties residing in Oklahoma, at various points, and especially in Oklahoma City, certain intoxicating liquors, consisting of wine, whiskey, beer, etc. aggregating in value over two thousand dollars (\$2000.00). That said shipments were made upon orders received and accepted in Texas, and said liquors were sold in Texas, and delivered in said State of Texas to the Gulf, Colorado & Santa Fe Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Missouri, Kansas & Texas Railway Company, and the Wells Fargo & Company Express, and other carriers for

344 transportation and delivery to said Oklahoma City and other points in Oklahoma, and that while said liquors which were so intended for said purchasers in Oklahoma City *was* in the course of transportation and in the hands of said carriers in Oklahoma City and before consummation of the said interstate shipment, by surrender to consignees of said bill of lading, the said defendants Caffey, Queenan, Garrett and others acting under the immediate instructions, directions and control of the defendants, Hayes, Waugh, Fenton, Cain and Murdock, and of other parties whose names are unknown, acting under the control of said defendants above named, and all of said parties, acting under the direction and control of the defendants Haskell, Stone and Caldwell, and claiming to act under and by virtue of search warrant issued out of the Justice Court of Oklahoma County by one William H. Zwick, Justice of the Peace, did seize all of said liquors that were then in the hands of said carriers, and by force and arms did deprive the said carrier of the possession thereof, with the intent to permanently appropriate the same to the use of the said defendants, and for the use of the State of Oklahoma, and did publicly assert their intention to permanently confiscate the said liquors and all of said defendants pursuant to and understanding between them to prevent these complainants from carrying on their said legitimate business of making interstate shipments from the State of Texas to the State of Oklahoma, as aforesaid, have threatened, and do intend to carry out said threats, and do openly assert it to be their intention, to seize and confiscate all liquors which this claimant intend- hereafter to make in the manner and form set out, while the same are in the hands of common carriers and constitute a part of an interstate shipment of liquors, in course of transportation, and before delivery to the consignees.

Your orator further shows that the alleged and pretended search warrants which were so issued by the Honorable William H. Zwick, Justice of the Peace, as aforesaid, were issued, or claimed to be issued pursuant to the provisions of the prohibition act of Oklahoma known as the Billups Bill, as aforesaid, but that the said Billups Bill has no application to the shipments so made by the complainant and intended hereafter to be made by them because the provisions of the said Billups Bill in so far as the same *is* applied or intended to be applied to interstate commerce shipments are unconstitutional and void and of no effect. And your orators further show that said Billups Bill, under which defendants claim to be acting, even if the same were valid and applied to shipments of the character hereinbefore set out, furnishes no adequate protection to complainants whatever, either as to the goods which have already been wrongfully seized by the defendants, and which are now in the possession under said wrongful seizures, or as to the goods which these complainants intend to ship, and which the said defendants intend to seize as hereinbefore set out. That after said defendants had wrongfully seized said goods as aforesaid under said pretended search warrants, the complainants, seeking to protect themselves appeared before the Honorable William H. Zwick, Justice of the Peace, upon the day upon which said cause was set for trial, and upon the day upon which the cause as to the status of the goods so seized *were* to be adjudicated, and on said hearing said William H. Zwick, after hearing the evidence, and after hearing counsel for said defendants purporting to represent the State of Oklahoma, and counsel for these complainants, adjudicated that said liquors were not subject to seizure and confiscation under the laws of Oklahoma, and that the same were interstate commerce shipments, and ordered that said liquors be restored to the respective carriers from whom they were wrongfully taken, as aforesaid.

346 That said William H. Zwick thereupon issued his order directing the Sheriff of Oklahoma County to carry said judgment to effect, and that the sheriff of Oklahoma county did take possession of a part of said liquors and restore the same to the carrier from whose possession they were taken. And thereupon immediately after the same were restored to the said carrier, and before the same were delivered to the original consignees, the above named defendants, Hayes, Waugh, Fenton, Cain, Murdock and Caffey, again seized said liquors under certain pretended search warrants which were obtained from one J. J. Bell, in another justice court, and still retain said liquors in their possession regardless of the judgment rendered in favor of said liquors and of these complainants by the Honorable William H. Zwick, thereby necessitating another trial before the said Beall, as Justice of the Peace, of the said issue so tried before the said Zwick: and these complainants aver the facts to be that said defendants openly assert their intention that if said goods are adjudicated by said Beall to be not subject to seizures and are ordered restored to the carriers, that they will seize the same

again under certain pretended search warrants to be issued by another court, and that said defendants Hayes, Waugh, Fenton and Cain, claiming to be acting under the directions and instructions of the defendants Haskell, Stone and Caldwell, openly assert their intention to continue such course of seizures and attempted confiscation towards all liquors which may be hereafter shipped by these complainants in the manner and form hereinbefore set out, and while same are in the custody of the carriers as aforesaid, and before delivered to the consignee. Your orator further shows that such course of conduct upon the part of defendants would necessitate a multiplicity of suits in order to protect the rights of these complainants, both as to the property already seized and the property hereafter to be shipped by complainants, and will necessitate a great expense and outlay of money. That all of the said defendants who are making said seizures are irresponsible parties, financially. That none of them are under any bond, except the said constables, who are under a small bond of one thousand dollars (\$1000.00) each, and that large quantities of goods are being entirely stolen, or claimed to be stolen from the warehouse in which said parties are storing said goods, and if said parties are permitted to seize and confiscate the goods of these complainants which they intend hereafter to ship to their customers the business of these complainants would be utterly ruined, and that they will be compelled to cease engaging in interstate commerce, and will lose thousands of dollars of profits, to which they are justly entitled, and that these complainants can obtain absolutely no redress in the courts of Oklahoma, as aforesaid, because, under the provisions of said alleged Billups Bill no action of replevin will lie, and these complainants are compelled to apply to this court and to appeal to its equitable powers for relief in order to protect the rights and privileges guaranteed to them under the laws and Constitution of the United States, and that irreparable damage and injury will be inflicted upon the business of these complainants by reason of the wrongful acts hereinbefore set out.

V.

Your orators further show that all the orders which have been received by them and accepted as hereinbefore set out, are for genuine bona fide interstate shipments and that it is not the intention, either of said purchasers, or of your orators, to make any shipments whatever in violation of the Act of Congress known as "The Pure Food Law" or of any law in violation of or applicable to such shipments and it is not the intention of complainants to misbrand the packages or boxes in which they will ship said liquors with any false or misleading words or inscriptions and that all sales which they intend to hereafter make and any and all shipments which they are now making or intend to hereafter make from Texas to Oklahoma, or any points, are now and always will be in strict compliance with all laws applicable to such shipments, and that in such shipments so to be made in compliance

with such orders so made and accepted they will lose the said amount of profits hereinbefore mentioned, unless this injunction is granted.

VI.

Your orator further shows that it is claimed by the defendants that all intoxicating liquors found in the State of Oklahoma which have been shipped by complainants in the manner and form hereinbefore set out, and even though still in the course of transportation and part of interstate shipments, are subject to seizure and confiscation under the laws of Oklahoma, and said pretended seizures are made under and by virtue of said claim.

The premises considered, complainants pray that the defendants Charles N. Haskell, as Governor of the State, S. W. Stone, Fred S. Caldwell and John Hayes, be enjoined and restrained from further advising, aiding, abetting, encouraging or instructing any of the other defendants herein, or any other person or persons under their control or within their employ, or within the employ of the State of Oklahoma, that it is illegal to make shipments of alcoholic liquors into the State of Oklahoma in the manner and form heretofore referred to, and that they be enjoined and restrained from advising, aiding, abetting, encouraging or instructing any of the other defendants herein, or any other person or persons in their employ, or in the employ of the State of Oklahoma, to seize any shipments that may now be in the hands of any common carrier, either in the city of Oklahoma City, or any other point in the State of Oklahoma which have been shipped in the manner and form hereinbefore set out, and are still in the hands of said carriers for transportation and delivery to consignees, and which said shipments have been made by these complainants in the manner
349 and form hereinbefore set out.

Complainants further pray that the defendants, Waugh, Cain, Murdock, Fenton, Caffey and Garrett, and all persons acting under their authority or control be enjoined and restrained from seizing any shipments or parts of shipments of intoxicating liquors which may be in the hands of any common carrier in Oklahoma City or any other point in the State of Oklahoma, and which have been shipped or may hereafter be shipped by these complainants to consignees in the State of Oklahoma in the manner and form hereinbefore set out while the same are in the hands of such carriers for transportation and before delivery to the consignees and surrender of the bill of lading and while said shipments are interstate shipments. That upon the final hearing of this cause the injunction herein prayed for may be made perpetual, and for such other and further proper and general relief as to Your Honors may seem meet and just in the premises. And your orators further pray to grant unto your orators a writ of subpoena issue- out of and under the seal of this Honorable court, to be directed to the said Charles N. Haskell, as Governor, S. W. Stone, Acting Dispensary Agent, Fred S. Caldwell, Counsel to the Governor, John Hayes, Assistant counsel to the Governor, G. F. Caffey, constable, W. J. Garrett, constable, John

Queenan, as constable, and to said pretended enforcement officers, J. J. Waugh, F. F. Cain, S. W. Fenton, William Murdock, commanding them on a certain day and date and under a certain penalty, in said writ personally to be and appear before Your Honors and this Honorable Court, and then and there a full, true and perfect answer make to all and every premises, and further to abide, and by, and perform all orders made by this Honorable Court, and that in the meantime a Temporary Restraining Order issue restraining and enjoining these defendants and each of them until the further order of this court from performing any and all of the acts hereinbefore set out.

Your orator further prays that this bill may be amended from time to time by adding the names of such parties thereto as causes herefor may arise and the said parties are engaged with the other parties herein in assaults upon the property of these complainants in the manner hereinbefore set forth. And your orators will forever pray in the premises, for such other and further relief in law and equity as they may be entitled to in the premises.

GIDDINGS & GIDDINGS,
Solicitors for Complainants.

UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

O. F. Haley, being duly sworn, deposes and says that he is the president and duly constituted and appointed agent of the complainant, The O. F. Haley Company, a corporation. That he has read the above and foregoing Amended Bill of Complaint, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

O. F. HALEY.

Subscribed and sworn to before me this 5th day of November, 1909.

[SEAL.]

HARRY L. FINLEY,
Clerk U. S. Circuit Court, Western Dist. of Oklahoma.

Endorsed: No. 489. In the Circuit Court of the United States, Western District of Oklahoma. The O. F. Haley Company, a corporation, Complainant, vs. Charles N. Haskell, Governor, et al., Defendants. Amended bill of complaint. Filed Nov. 5, 1909. Harry L. Finley, Clerk.

351 In the Circuit Court of the United States Within and for the Western District of Oklahoma.

No. —. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Complainant,
vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; John Queenan, Constable; W. J. Garrett, Constable; F. F. Cain, S. W. Fenton, William Murdock, and B. J. Waugh, Defendants.

Notice of Hearing.

To Fred S. Caldwell, Solicitor for the Defendants:

You are hereby notified that the application for Temporary Injunction applied for herein, will be presented to the Court at 1:30 o'clock P. M. this date or such time thereafter as the Court may determine.

Dated this 5th day of November, A. D. 1909.

GIDDINGS & GIDDINGS,
Solicitors for Complainants.

Service of the foregoing notice and copy of the Bill of Complaint is hereby acknowledged this 6th day of November, A. D. 1909.

FRED S. CALDWELL,
Solicitor for Defendants.

Endorsed: No. 489. O. F. Haley Co. vs. Charles N. Haskell et al.
Proof of Service. Filed Nov. 10, 1909. Harry L. Finley, Clerk.

352 UNITED STATES OF AMERICA,
State of Oklahoma, ss:

In the Circuit Court of the United States Sitting in and for the Western District of Oklahoma.

No. 489.

THE O. F. HALEY COMPANY, a Corporation, Complainant,
vs.
CHARLES N. HASKELL et al., Defendants.

Temporary Injunction Order.

The above entitled cause came on for hearing before the Court on Wednesday, November 10, 1909, upon the amended bill of complaint of the complainant, pursuant to a former order of this Court. Thereupon the complainant introduced its amended bill of complaint

ly sworn to, as an affidavit in support of its application for a temporary injunction issued herein, and thereupon rested. The defendants offered no testimony in contradiction thereof. Thereupon the Court, after considering the amended bill of complaint and the arguments in support thereof, is of the opinion that the relief prayed for by the complainant should be granted as against the defendants John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, and that a temporary injunction should issue.

Now, therefore, You, the said John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, and each of you, and all persons acting by, through and under you, or either of you are hereby enjoined until the further order of this Court from seizing, or causing to be seized, either directly or indirectly, any intoxicating liquors shipped by the complainant from the State of Texas to actual bona fide consignees within the Western District of the State of Oklahoma, while said intoxicating liquors are in the possession of the interstate common carrier, and before the same have been delivered to such consignees. Provided, however, that this order shall not apply to any liquors shipped in violation of Section 3449 of the Revised Statutes of the United States, or any other Act of Congress, or to any liquors which are adulterated, or misbranded, within the meaning of the Act of Congress of June 30th, 1906, ch. 3915, 34 Stat. L. 768, commonly known as the Pure Food and Drug Act.

This order to become effective upon the complainant's executing and filing a good and sufficient bond in the sum of Five Thousand (\$5,000.00) Dollars, to be approved by the Clerk of this Court indemnifying the above named defendants against any damage they may sustain thereby in the event it should be determined that this order should not have been issued.

It is further ordered that the complainant, The O. F. Haley Company, a corporation, have fifteen days in which to execute and file said bond, and that in the meantime the restraining order heretofore issued by this Court shall remain in full force and effect.

To which order and decree, the defendants, and each of them, at the time duly excepted, on the grounds that said order and decree are contrary to law, and that complainant's bill does not state facts sufficient to constitute a cause of action against defendants, or any of them, and that said order and decree is in violation of Section 720 of the Revised Statutes of the United States and in violation of the 14th Amendment to the Constitution of the United States.

JOHN H. COTTERAL, *Judge*.

Endorsed: No. 489. U. S. of America, State of Oklahoma, Western District. The O. F. Haley Co. vs. C. N. Haskell, et al. Temporary Injunction Order. Filed Nov. 10, 1909. Harry L. Finley, Clerk.

354 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States Within and for Said District.

No. 489. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Complainant,

vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Respondents.

Demurrer for Lack of Jurisdiction and Equity.

These respondents, Charles N. Haskell, Governor, S. W. Stone, Acting Dispensary Agent, Fred C. Candwell, Counsel to the Governor, John Hayes, Assistant Counsel to the Governor, G. F. Caffey, constable, W. J. Garrett, constable, John Queenan, Constable, F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, by protestation, not confessing or acknowledging all, or any, of the matters or things in the said bill of complaint contained, to be true, in such manner as the same are therein set forth and alleged, demur to the said bill; and for cause of demurrer show:

I.

That it appears by the complainants' own showing by the said bill that they are not entitled to the relief prayed by said bill against these respondents, or any of them.

II.

That it appears from complainants' said bill of complaint that this Court has no jurisdiction to hear and determine this action, and that the relief prayed for is sought in direct violation of the Eleventh Amendment to the Constitution of the United States.
355 and of Section 720 of the Revised Statutes of the United States.

III.

That complainants' said bill of complaint is wholly without equity.

Wherefore, and for divers other good causes of demurrer in said bill, these respondents demur thereto, and they and each of them pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to complainants' said bill;

and they and each of them humbly pray to be hence dismissed with their reasonable costs in their *half* sustained.

FRED S. CALDWELL,
Solicitor for Respondents.

Verification.

STATE OF OKLAHOMA,
County of Logan, ss:

Fred S. Caldwell, being first duly sworn, on oath says: That he is the solicitor for the respondents to the foregoing demurrer in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point of law; and on behalf of said respondents, and each of them, says that the same is not interposed for delay.

FRED S. CALDWELL.

Subscribed and sworn to before me this 4th day of Dec. 1909.

[SEAL.]

JULIET WRIGHT,
Notary Public.

My com. Exp. Dec. 19, 1911.

Endorsed: No. 489. U. S. of America, State of Okla. Western District. O. F. Haley, etc. vs. C. N. Haskell, et al. Demurrer. Filed Dec. 4, 1909. Harry L. Finley, Clerk.

66 Circuit Court of the United States for the Western District of Oklahoma, January Term, 1910. Saturday, January 8th, 1910.

489.

THE O. F. HALEY Co., Complainant,
vs.
C. N. HASKELL et al., Defendants.

Now on this January 8th 1910, comes the complainant herein by attorneys, Giddings & Giddings and come the defendants by their attorney Fred S. Caldwell. Thereupon the demurrer of all defendants filed herein, is argued by counsel and submitted to the court.

Journal 3—Page 87.

7 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 489.

THE O. F. HALEY COMPANY, a Corporation, Complainant,
vs.
CHARLES N. HASKELL, Governor, et al., Defendants.

Order.

Now on this February 19th, 1910, the demurrer filed herein to complainant's bill having been heretofore argued and submitted to

the court, on to-wit, January 8th, 1910, the complainant appearing at that time by its attorneys, Giddings & Giddings, and the defendants by their attorney, Fred S. Caldwell, and the court being now fully advised it is,

Ordered, that the said demurrer be and the same is hereby overruled.

It is further ordered that defendants have until the March, 1910, rule day, in which to file answer herein.

To which order and ruling of the court in overruling the said demurrer, exceptions are allowed the defendants and each of them.

JOHN H. COTTERAL, *Judge.*

Endorsed: 489. The O. F. Haley Company vs. Charles N. Haskell, Governor, et al. Order overruling demurrer. Filed February 19, 1910. Harry L. Finley, Clerk, by M. V. Haws, Deputy.

358 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States in and for said State and District.

No. 489. In Equity.

THE O. F. HALEY COMPANY, a Corporation, Complainant,
vs.

CHARLES N. HASKELL, Governor; S. W. STONE, Acting Dispensary Agent; Fred S. Caldwell, Counsel to the Governor; John Hayes, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Respondents.

Joint Answer of Respondents Charles N. Haskell, S. W. Stone, Fred S. Caldwell, John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, F. F. Cain, S. W. Fenton, and William Murdock.

These respondents, Charles N. Haskell, S. W. Stone, Fred S. Caldwell, John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, F. F. Cain, S. W. Fenton, and William Murdock, now and at all times hereinafter saving to themselves all and all manner of benefit or exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, or so much thereof as these respondents are advised is material or necessary for them to make answer to, answering say:

I.

These respondents admit the citizenship of complainants and the citizenship of these respondents, in manner and form as alleged in said bill of complaint; and these respondents further admit that complainants are dealers in intoxicating liquors, and have their office and place of business in the City of Gainesville, in the State of

359 Texas, and that their method of business carried on and conducted with citizens and residents of the State of Oklahoma is in part carried on and conducted in manner and form as stated and alleged in paragraph I of their said bill of complaint. But these respondents say, that by far the greater portion of such intoxicating liquors so shipped into the State of Oklahoma by complainants, are knowingly shipped into said State and there delivered or caused to be delivered by complainants to sundry and diverse persons for the sole and express purpose of being used by said persons in violation of the laws of the State of Oklahoma, to-wit: in violation of the Constitution of said State and in violation of Article III, Chapter 61, of the 1909 Compiled Laws of the State of Oklahoma, and also in violation of an Act of Congress approved on the 16th day of June, 1906, (Ch. 3335, U. S. Stat. 1905-6, Part I, p. 267,) and entitled: "An Act to Enable the People of Oklahoma and of the Indian Territory to form a Constitution and State Government, and be admitted into the Union on an equal footing with the original States; and to Enable the People of New Mexico and of Arizona to form a Constitution and State Government, and be admitted into the Union on an equal footing with the original States."

And these respondents further say that as appears from "Record Ten" in the office of the United States Internal Revenue Collector for the District of Kansas, at Leavenworth, in the State of Kansas, of which said District the said State of Oklahoma is a part, the persons within the State of Oklahoma to whom the great bulk of the intoxicating liquors shipped into said State by complainant, are by complainants delivered or caused to be delivered, are persons who have paid the special tax required of liquor dealers by the United States and of all this complainants have or could easily obtain actual knowledge. And these respondents further say,

360 that the great bulk of complainant's said intoxicating liquors so shipped into the State of Oklahoma consists of intoxicating liquors shipped into said State to be there delivered and placed in the possession of said persons who have paid said special tax required by the United States of liquor dealers, and whose sole and only purpose it is to use and dispose of said intoxicating liquors in violation of the laws of said State of Oklahoma, to-wit: Article III, Chapter 61, of the 1909 Compiled Laws of the State of Oklahoma, and the prohibition Article of the Constitution of the State of Oklahoma. And these respondents further say that because of the quantities contained in the shipments and the frequency with which such shipments are made to the same person or persons, and from other facts and circumstances, such as payment by said persons to whom complainants deliver or cause to be delivered said intoxicating liquors, of the special tax required of liquor dealers, by the United States, complainants well know that such intoxicating liquors so brought into the State of Oklahoma by themselves and there by them delivered or caused to be delivered are intended by the persons to whom the same are delivered or caused to be delivered, to be kept, used or disposed of, in violation of said laws of said State of Oklahoma, and therefore constitute and become public nuisances within said State

of Oklahoma immediately upon being by complainants placed caused to be placed in the possession of such persons.

II.

These respondents further admit that respondent, Charles N. Haskell is the duly elected, qualified and acting Governor of the State of Oklahoma, and as such Governor is the head of the executive department of the State of Oklahoma; that the respondent S. V.

Stone is the duly appointed, qualified and acting State Agency Superintendent of the State of Oklahoma, under and pursuant to the terms and provisions of Chapter 61 of the 1909 Compiled Laws of the State of Oklahoma; that the respondent Fred S. Caldwell, is the duly appointed, qualified and acting Counsel to the Governor, under and pursuant to Article III of Chapter 61, of the 1909 Compiled Laws of the State of Oklahoma; that respondent John Hayes is a duly appointed, qualified and acting Assistant Counsel to the Governor; that the respondents, G. Caffey, W. J. Garrett, and John Queenan, are duly constituted, qualified and acting constables of Oklahoma City Township, Oklahoma County, State of Oklahoma; that respondents, F. F. Cain, S. W. Fenton, and William Murdock, are assistants, employees, and representatives of the respondents, S. W. Stone, as such State Agency Superintendent of the State of Oklahoma; but these respondents at each of them expressly and specifically deny that they have ever committed any wrong or trespass against complainants, their property or property rights, in manner and form as charged alleged in paragraph II of their said bill of complaint, and expressly deny that they are contemplating or threatening to commit, cause to be committed or in any manner urge the commission of any such wrong or trespass and expressly aver the facts with reference to all matters referred to in said paragraph II of said bill of complaint to be as follows:

Sections 4180, 4184, 4185, and 4187, of the 1909 Compiled Laws of the State of Oklahoma, are in words and figures as follows:

"SEC. 4180. What Unlawful—Penalty.—It shall be unlawful for any person, individual or corporate, to manufacture, sell, barter, give away, or otherwise furnish, except as in this Act provided, any spirituous, vinous, fermented, or malt liquors, or any imitation thereof or substitute therefor; or to manufacture, sell, barter, give away, or otherwise furnish any liquors or compounds of any kind or description whatsoever, whether medicated or not, which contain as much as one half of one per centum of alcohol, measured by volume, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States; or to ship or in any way convey such liquor from one place within this State to another place therein except the conveyance of a lawful purchase as hereinafter authorized; or to solicit the purchase or sale of any such liquors, either in person or by sign, circular, letter, card, price list, advertisement or otherwise, or to distribute, publish

display any advertisement, sign or notice where any such liquor may be manufactured, bartered, sold, given away, or otherwise furnished, or to have the possession of any such liquors with the intention of violating any of the provisions of this act. A violation of any provisions of this section shall be a misdemeanor, and shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars, and by imprisonment for not less than thirty days, nor more than six months; provided, however, that the provisions of this act shall not apply to the manufacture and sale of unfermented cider and wine made from apples, grapes, berries or other fruit grown in this State, and to the use of wine for sacramental purposes in religious bodies."

"SEC. 4184. Warrant Issued by Whom—How Served—Seizure of Property.—If it shall be made to appear to any judge of the district or county court or justice of peace that there is probable cause to believe that liquors are being manufactured, sold, bartered, given away, or otherwise furnished, or are being kept for the purpose of selling, bartering, giving away, or otherwise furnishing liquors in violation of this Act, such judge or magistrate shall issue a warrant directed to any officer of the county whom the complainant may designate, having the power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant, and to seize all such liquors there found, together with the vessels in which they are contained, and all implements, furniture, and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away or otherwise furnishing of such liquors, and safely keep the same, and to make return within three days of said warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession the same was found, if any, and if no person be found in the possession of said property, his return shall so state. A copy of said warrant shall be served upon the person or persons found in the possession of any such liquors, furniture or fixtures so seized, and if no person be found in possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same are found."

"SEC. 4185. Hearing.—Upon the return of such warrant as provided in the next preceding section, the magistrate or judge shall fix a time, not less than ten days nor more than thirty days thereafter, for hearing of said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof, was used in violation of any of the provisions of this act. At such hearing, any party claiming an interest in any such property, may appear and be heard, and if upon such hearing it shall appear that any property so seized was knowingly used, or permitted to be used, in violation of any provision of this Act, the same shall be adjudged forfeited by the State, and shall be delivered to the custody of the superintendent to be disposed of under the provisions of this Act. If upon such hearing it shall appear that any property so seized was not kept or used for an unlawful purpose, or if any person shall show that he is the owner of any furniture, fixtures, or other property

seized under such warrant, and that the same, or any part thereof, were unlawfully used without his knowledge or consent, the same shall be returned to its lawful owner."

363 "Sec. 4187. Warrant Not to Issue Except on Oath.—No such warrant shall issue but upon probable cause, supported by oath or affirmation describing as particularly as may be the place to be searched, or the person or thing to be seized."

That the method by which the State of Oklahoma enforces the foregoing statutory provisions and abates liquor nuisances found to exist within its borders, within the meaning of said statutes, is as follows:

The district courts, county courts, and justice of peace courts, of said State, are vested with jurisdiction of all actions against any particular quantity of intoxicating liquor for the purpose of determining whether or not said particular quantity of intoxicating liquor is an offending thing against said laws, and therefore constitutes and is a public nuisance, within the purview and meaning of said laws hereinabove set forth; that all such actions are prosecuted by The State of Oklahoma, directly, in its own name, against said particular quantity of intoxicating liquor as such offending thing; that all such actions are commenced by The State of Oklahoma in its said courts in the following manner, to-wit: Some person having knowledge of the facts appears before a judge of a district court or before a judge of a county court, which said courts are courts of record, or before a justice of the peace, which said justices of the peace courts are not courts of record, and such person so appearing before such judicial officer makes a complaint in writing, and supported by his oath or affirmation, which said complaint so sworn to describes as particularly as may be the place to be searched and the intoxicating liquor to be seized, and also recites facts, which, standing alone and undisputed, are sufficient to establish *prima facie* the existence of such intoxicating liquors as a liquor nuisance; that upon such sworn complaint, in writing, said judicial officer, to whom the same is presented, judicially determines whether or not there is probable cause for the issuance of a warrant, pursuant to the terms and provisions of said sections 4184 and 4185, *supra*.

364 of said laws, and if said judicial officer thereupon judicially determines that such probable cause exists, he thereupon causes to be instituted, in the respective judicial tribunal over which he presides, an action by the State of Oklahoma, against such intoxicating liquor, so described in said complaint, and forthwith issues in said action a search and seizure warrant, pursuant to the terms and provisions of said sections 4184 and 4185 *supra*, of said laws; and such search and seizure warrant is, by said judicial officer so issuing the same, directed to one of the executive officers of said judicial tribunal over which said judicial officer presides, to-wit: a constable, or sheriff, or a duly constituted deputy of either, and such warrant is by such judicial officer delivered to such executive officer of said judicial tribunal for service and execution; that said sheriff or constable, or said duly constituted deputy of either, to whom such search and seizure warrant is so directed and delivered,

takes the same and proceeds therewith to the place described therein, and by authority thereof seizes and takes possession of all intoxicating liquor there found which is described in said warrant, and said officer so executing said warrant thereupon serves a copy of the same upon the person or persons found in possession of such intoxicating liquor, and if no person be found in possession thereof said officer posts a copy of such warrant on the door of the building or room or compartment or place where the said intoxicating liquor is found; that thereafter, and within three days from the issuance of such warrant, said officer makes due return thereof to said judicial tribunal out of which the same issued, and in such return said officer shows all acts and things done by him thereunder, with a particular statement of all intoxicating liquors seized and of the person or persons in whose possession the same were found, if any, and

365 if no person be found in the possession of said intoxicating liquors his return so states; that upon such return of such warrant, in manner and form as hereinabove stated, said judicial officer who issued said warrant fixes a time not less than ten days nor more than thirty days thereafter for a hearing upon said return, and at such hearing said judicial tribunal proceeds to hear and determine whether or not the intoxicating liquor so seized or any part thereof was a thing offending against said laws, and was therefore a liquor nuisance. At such hearing any party claiming an interest in any such intoxicating liquor may appear before said judicial tribunal and be heard, and if upon such hearing, it shall appear or shall be shown, that any such intoxicating liquor so seized, was at the time of such seizure a shipment made to a person within the State of Oklahoma, from a place outside of said State, and had not been delivered by the interstate carrier, under the contract of interstate shipment, to the consignee at the place of destination, then, in that event, pursuant to a decision of the Supreme Court of Oklahoma, in the case of *State v. 18 Casks of Beer, et al.*, 104 Pac. 1093, said judicial tribunal forthwith orders and adjudges that such intoxicating liquors be returned to the person or persons so claiming it, on the ground that at the time it was seized it had not ceased to be interstate commerce within the meaning of subdivision 3, section 8, article I of the Constitution of the United States, and had not arrived within the State of Oklahoma, within the meaning of the Act of Congress of August 8, 1890 (c. 728, 26 Stat. 313, U. S. Comp. St. 1901, p. 3177). Provided, however, that if it be shown and established at such hearing that said intoxicating liquor or any portion thereof was so shipped from a point outside the State of

366 Oklahoma to a place within said State; and that such act of shipment was performed in violation of section 3449 of the Revised Statutes of the United States, or in violation of any one or more of sections 238, 239 and 240 of the Act of Congress of March 4, 1909 (35 Stat. L. 1136-7) or that said intoxicating liquor was "adulterated" or "misbranded" within the meaning of the Act of Congress of June 30, 1906, ch. 3915, 34 Stat. L. 768, commonly known as the Pure Food and Drug Act, then as to all such liquor so shipped or "adulterated" or "misbranded" in violation

of said acts of Congress, said judicial tribunals hold said commerce clause of the Constitution of the United States, *supra*, to be inapplicable, on the ground that such intoxicating liquor is not and, under such circumstances, could not be made a legitimate subject of interstate commerce, and, therefore, as to all such liquor, said judicial tribunals proceed regardless of the fact that the same may have been in the possession of an interstate common carrier undelivered under a contract of interstate shipment at the time the seizure was made.

III.

As to paragraph III of complainants' said bill of complaint, these respondents and each of them, specifically deny that they or any of them have ever interfered or that they or any of them have ever threatened or are threatening or in any manner intend to interfere with complainants' said business, and said interstate shipments of intoxicating liquors, sent into the State of Oklahoma, except to such extent and in such manner as the same may be incidentally affected by the due and orderly procedure in said courts of the State of Oklahoma, of proceedings instituted therein and prosecuted by the State of Oklahoma pursuant to said sections 4184, 4185 and 4187 of said 1909 Compiled Laws of the State of Oklahoma, in manner and form hereinabove set forth, and these respondents and
367 each of them, expressly deny that they have ever in any manner, counseled, instructed or advised or that they intend in the future in any manner to counsel, instruct or advise, any person or persons, whomsoever, to act in any manner touching or concerning complainants' said interstate shipments of intoxicating liquor into the State of Oklahoma, other than according to the due and orderly course and procedure under said laws of the State of Oklahoma, in manner and form hereinabove stated.

IV.

As to paragraph IV of complainants' said bill of complaint these respondents say: That said paragraph IV is fully answered by paragraph II of this answer.

V.

As to paragraph VI of complainants' said bill of complaint, these respondents say: That they deny each and every allegation and statement therein contained.

VI.

And these respondents deny all and all manner of unlawful combination and confederation wherewith they are charged in said bill, and without this there is no other material cause or thing in said complainants' bill of complaint contained material or necessary for this respondent to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this respondent, all of which matters and things these respondents are ready and willing

to aver, maintain, and prove, as this Honorable Court shall direct, and these respondents humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

FRED S. CALDWELL,
Solicitor for Respondents.

368-369 Endorsed: No. 489. In Equity. In the Circuit Court.

The O. F. Haley Company, a corporation, Complainant, vs. Charles N. Haskell, Governor, S. W. Stone, Acting Dispensary Agent, Fred S. Caldwell, Counsel to the Governor, John Hayes, Assistant Counsel to the Governor, G. F. Caffey, constable, W. H. Garrett, constable, John Queenan, constable, F. F. Cain, S. W. Fenton, William Murdock and B. J. Waugh, Respondents.

Joint Answer of respondents Charles N. Haskell, Fred S. Caldwell, S. W. Stone, John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, F. F. Cain, S. W. Fenton and William Murdock.

Filed March 5th, 1910. Harry L. Finley, Clerk, by M. V. Haws, Deputy.

370 In the Circuit Court of the United States Within and for the Western District of Oklahoma.

No. —. In Equity.

J. T. S. BROWN & SONS, a Corporation, Complainant,
vs.

CHARLES N. HASKELL, as Governor of the State of Oklahoma; S. W. Stone, Superintendent of the State Dispensary; Fred S. Caldwell, Counsel to the Governor of Oklahoma; John M. Hays, Assistant Counsel to the Governor of Oklahoma; Samuel Calhoun, Acting Sheriff of Oklahoma County, Oklahoma; H. D. Garrison, the Duly Appointed and Qualified Sheriff of Oklahoma County, Oklahoma; John Hubatka, Chief of Police of Oklahoma City, Oklahoma; G. F. Caffey, W. J. Garrett, and John Queenan, Constables for Oklahoma City, Oklahoma, and F. F. Cain, S. W. Fenton, Wm. Murdoch, and the Successors in Office of Each and Every One of the Above Named, Defendants.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States for the Western District of the State of Oklahoma:

Comes now J. T. S. Brown & Sons, a corporation organized under the laws of the State of Kentucky, and a citizen and inhabitant of the United States and of the State of Kentucky, with its headquarters and principal place of business at Louisville, in the State of
371 Kentucky, and brings this its bill of complaint against the defendants, Charles N. Haskell, as Governor of the State of Oklahoma, S. W. Stone, Acting Superintendent, or Dispensary

Agent, for the State of Oklahoma, Fred S. Caldwell, Counsel to the Governor of the State of Oklahoma, John M. Hays, Assistant Counsel to the Governor of the State of Oklahoma, Samuel Calhoun, Acting Sheriff of Oklahoma County, Oklahoma, H. D. Garrison, the duly appointed and qualified Sheriff of the County of Oklahoma, in the State of Oklahoma, John Hubatka, Chief of Police of Oklahoma City, Oklahoma, G. F. Caffey, W. J. Garrett, and John Queenan, Constables for Oklahoma City, Oklahoma, F. F. Cain, S. W. Fenton, Wm. Murdoch, and their successors in office, deputies, agents, and employees whose names and official capacity are to your orator unknown, and all of whom are citizens, residents, and inhabitants of the State of Oklahoma, in the Western District thereof, and all citizens and inhabitants of the Western District of Oklahoma, and all public officers, their deputies, agents or employees who shall engage in and make assault upon or destruction of complainant's rights of property and of commerce between states as hereinafter set forth, this bill to be amended hereto by amendments from time to time as causes shall arise, and therefore your orator complains and says:

I.

That your orator does not know the names and official capacities of all the officers and persons of whose acts complaint is hereby made, and cannot set out the same more fully than is hereinbefore stated.

372 That your complainant is a distiller, manufacturer of and dealer in alcoholic liquors, being a corporation organized under the laws of the State of Kentucky, and having its principal office and place of business in the city of Louisville, in said State of Kentucky, and that it has built up and now enjoys a large and lucrative business in the sale of such liquors in the State of Kentucky, consisting in a large part of the sale thereof to customers residing outside of the State of Kentucky and throughout the United States, including customers in the State of Oklahoma; that its principal method of making shipments into the various places, including the State of Oklahoma, is to receive mail orders for shipments of its manufactured product and liquors direct from its customers outside of the State of Kentucky for sales of liquor, to be made in the State of Kentucky, and after such orders are received and accepted by your orator at its place of business in Louisville, Ky., to deliver said liquors to the various railway, express, and transportation companies entering the city of Louisville, Kentucky, to be by said railway, express, and transportation companies transferred over their own and connecting lines from Louisville, Kentucky, the origin or shipping point, to the various points in other States, including the State of Oklahoma, where said customers reside, the said common carriers and transportation companies agreeing to transport said liquors by interstate shipments from Louisville, Kentucky, to the points of destination, and there to deliver to the said customers residing in the State of Oklahoma the said liquors so consigned to them. And in all case wherein said liquors are shipped as afore-

said from Louisville, Kentucky, to points in Oklahoma, the sales are made in the State of Kentucky, and outside the State of Oklahoma, to be delivered to the consignees or persons ordering same in the State of Oklahoma by the common carriers or transportation companies and their connecting interstate lines, as aforesaid.

Your orator further shows that its custom is after delivering the said liquors to the railway and express companies, and other common carriers, for shipment as aforesaid at Louisville Kentucky, to said points in the State of Oklahoma, to receive from the carrier or transportation company a bill of lading, which bill of lading is usually made out in the form hereinafter shown, and to forward the said bill of lading to some bank or responsible person, to be delivered to the purchaser of said liquors upon the payment of a draft for the purchase price thereof to which said bill of lading is attached; the bill of lading generally used being in substantially the following form, to-wit:

"Received of J. T. S. Brown & Sons, of Louisville, Kentucky, in apparent good order the following articles marked — to be delivered in like good order to — by — railway — No. — article — from —."

the railway company, or other carrier, filling in the blanks so as to agree with dates, name of purchaser, character of goods, as therein shown on said bill of lading.

That each and all of said shipments are made on bona fide orders received and accepted by your orator at its principal place of business in the State of Kentucky, and said liquors are all sold by your orator in the State of Kentucky; and said bills of lading are attached to said draft, and immediately sent through the United States mails to some bank or responsible person at the address of the person ordering and purchasing said goods simply as a means of collecting the purchase price thereof, and with instructions to the persons to whom sent to turn over and deliver said draft and bill of lading to the purchaser upon the payment of the amount specified in said draft. And said method of making shipments is what is known as the "Sight Draft and Bill of Lading" method. And the goods described and named in said bill of lading remains in the hands of the transportation company until the bill of lading therefor is surrendered to said transportation company, or carrier, by the consignees named therein.

Your orator does not ship any goods into the State of Oklahoma in its own name, or to its own order, to be there sold or disposed of, and does not ship any goods or liquors into the State of Oklahoma to any person, firm, or corporation except on bona fide orders sent to it through the United States mails, received and accepted by it at its principal place of business at Louisville, in the State of Kentucky, and does not sell or ship any goods to any person whom it has reason to believe is violating or intends to violate the liquor laws of the State of Oklahoma.

That the details of the transactions of this character that your complainant makes into the State of Oklahoma are as follows:

Your complainants, prior to the admission of the State of Oklahoma into the Union, had and enjoyed a large and lucrative business in the sale of its manufactured product and liquors in the then Territory of Oklahoma, which had been built up and established by maintaining in said Territory a traveling representative, and by the distribution of literature then entirely admissible in said
375 Territory, and the liquors manufactured and sold by your complainant then had and still have an established reputation for purity of quality in Oklahoma and elsewhere. And your complainant is now, and for several years past has been receiving orders through the United States mails which are delivered to it and accepted by it at its place of business in Louisville, Kentucky, for the shipment of its manufactured product and liquors to various and divers persons at various and divers points, and particularly Oklahoma City, in the State of Oklahoma, and as a result thereof it is engaged in making shipments of goods which are sold by it at its place of business in the State of Kentucky, to various and divers persons in the State of Oklahoma.

That upon the payment of the said sight draft, as above stated, and the surrender of the bill of lading thereto attached to the common carrier transporting said liquors, the same are turned over and delivered to the purchaser thereof, but not before, and that if said draft is not promptly paid and the bill of lading thereto attached not promptly taken up, said liquors are returned to your complainant, and are not sold turned over, or delivered to any other person than the one named in said bill of lading; and that said liquors are not unlawfully sold or given away, or kept in the State of Oklahoma, to be unlawfully sold or given away therein.

II.

Your complainant further shows that its business conducted as aforesaid is by it confined exclusively to carrying on commerce between the State of Kentucky and the other States of the United States, and as to the matters involved in this bill the State of Oklahoma; that said commerce is protected by the Commerce Clause of the Constitution of the United States, to-wit: That con-
376 tracts by order, acceptance, and shipments made as aforesaid between complainants and their customers residing in Oklahoma were made in and pursuant to the privilege of freedom of commerce between the states and the rights of a citizen of one state to contract to send merchandise into another state from which order for same should come.

Complainant further shows to the court that all railroads, express companies, transportation companies, and common carriers having lines into Oklahoma accept this class of shipments and the interstate shipments made by your complainant.

III.

Your orator further shows that at this time it has many orders for its said goods to be sold in Kentucky, and shipped by carrier, aforesaid, to various points in Oklahoma, there to be delivered to the consignees in the manner and form hereinbefore set out, and their legitimate profits on said sales so made in the State of Kentucky for shipments to be made by it into the State of Oklahoma will be largely in excess of \$5000.00. And it has accepted said orders, and expects in the proper and legitimate exercise of its rights to engage in interstate commerce with the citizens of Oklahoma, to continue said business and its said profits, and to continue to accept legitimate and bona fide orders at its said office and place of business in Louisville, Kentucky, and to make deliveries as aforesaid, and to continue its legitimate business of engaging in interstate commerce as aforesaid, and that it does not intend to and will not make sales of its said goods for any unlawful purposes, or for the purpose of being bartered, sold, or given away in the State of Oklahoma in violation of the laws of said State.

77

IV.

Your orator further shows that the defendant, Charles N. Haskell, is the duly elected, qualified, and acting Governor of the State of Oklahoma, and as such is the head of the Executive Department of said State; that the defendant, Fred S. Caldwell, is the duly appointed counsel to the Governor of Oklahoma for the enforcement of the prohibitory or liquor laws of said State; that the defendant, John M. Hays, is the duly appointed Assistant counsel to the Governor; that the defendant, S. W. Stone, is the acting Dispensary Agent, or Superintendent of Dispensary, for the receipt, sale, and distribution of liquors purchased, seized, and confiscated in said State; that the defendant, H. D. Garrison, is the duly appointed and qualified Sheriff of Oklahoma County, Oklahoma, and the defendant, Samuel Calhoun, is the acting Sheriff of Said County; that the defendant, John Hubatka, is Chief of Police of Oklahoma City, Oklahoma, and commanding officer of the Police force of Oklahoma City; that the defendants, G. F. Caffey, W. J. Garrett, and John Queenan are constables for Oklahoma City, Oklahoma; and the defendants, F. F. Main, S. W. Fenten, and Wm. Murdoch are, or claim to be, officers in the State of Oklahoma, whose official capacities are to your complainant unknown, and that the defendants above named, and all of them, their deputies, agents, assistants, and employees are all acting under and pursuant to directions given them by the principal officers and persons herein named, and are all under the supervision and control of said principal officers in the commanding of the wrongs and trespasses hereinafter more fully set out.

That the said Charles N. Haskell, S. W. Stone, Fred S. Caldwell, John M. Hays, and others whose names are hereinbefore set out, claiming to be enforcing the provisions of a certain Act of the Legislature of the State of Oklahoma known as the "Billups Bill" and otherwise known as the "Enforcing Act," and

78

which alleged bill has for its object, or claims to have for its object, the prohibition of the bartering, selling, or giving away of intoxicating liquors in the State of Oklahoma, and the enforcement thereof, have instructed the other defendants and many other numerous parties whose names are unknown to your orator, that all shipments of intoxicating liquors made in the manner and form hereinbefore stated are illegal and in violation of the said Act of Legislature and of the Constitution of Oklahoma, and that said Act of the Oklahoma Legislature prohibiting the bartering, selling, or giving away of intoxicating liquors applies to and includes within its provisions all shipments of liquor which are interstate shipments while said liquors are still in the hands of the carrier transporting the same before surrender of the bill of lading and delivery of said liquors to the consignees, and which has been made in the manner and form hereinbefore set out. And said Charles N. Haskell, and the other officers hereinbefore named, their deputies, agents, and employees, and other persons acting under their instructions, directions and orders have ordered, authorized and directed to be seized, confiscated, and appropriated to their own use and to the use of the State of Oklahoma through said officers all liquors so shipped by your orator in the manner and form hereinbefore set out while the same are in the hands of the railway companies, express companies, or other carriers in the State of Oklahoma, and before the delivery of the same to the consignee, as aforesaid, and while in course of transportation, as aforesaid, whereby it is their purpose and intention to seize, take, and carry away said liquors, and deprive the complainant and the consignees thereof of the possession and value of
379 said goods, and by so doing to prevent your orator from engaging further in the business of making interstate shipments, as hereinbefore described. And it is the intent and purpose of the defendants herein named, by themselves, their deputies, agents, and assistants to totally destroy the business of your orator, as aforesaid, unless the business of your orator is protected by an order of this court, and that the amount in controversy in this cause is in excess of \$5000.00, exclusive of interest and costs.

V.

That heretofore, and on divers times and occasions during the months of June, July, August, September, and October, 1909, complainant, pursuant to its said method of doing business as aforesaid, and following out its right to engage in legitimate interstate commerce with the citizens of Oklahoma, did ship from the State of Kentucky to many parties residing in Oklahoma at various points therein, and especially in Oklahoma City, certain liquors aggregating in value over \$2000.00. That each and all of said shipments were made upon orders received and accepted in Louisville, Kentucky, and said liquors were sold in Kentucky, and delivered in the State of Kentucky to various and divers railway, express, and transportation companies and common carriers having lines or connecting lines entering into the State of Oklahoma, and particularly into Oklahoma City, and that while said liquors which were so intended

and consigned to said purchasers in Oklahoma, and particularly in Oklahoma City, were in course of transportation and in the hands of said carriers in Oklahoma City, and before termination of said interstate shipment by surrender to the consignees of said bill of lading, the said defendants, or some of them, and other persons acting under their immediate instructions, directions, and control, whose names are to your orator unknown, and which defendants and persons acting under their direction, and aiming to act under and by virtue of search warrants, or writs of seizure, issued out of the Justice Court of Oklahoma County by one William H. Zwick, Justice of the Peace, did seize large quantities of said liquors that were then in the hands of said carriers, and by force and arms did deprive the said carriers of the possession thereof with the intent to permanently appropriate the same to the use of the said defendants, and for the use of the State of Oklahoma, and did publicly assert their intent to permanently confiscate the said liquors, and all of said defendants, pursuant to an understanding between them to prevent and deprive your orator from carrying on its said legitimate business of making interstate shipments from the State of Kentucky to the State of Oklahoma, as aforesaid, have threatened, and do intend to carry out said threats, and do openly assert it to be their intent to seize, and confiscate all liquors which your orator may hereafter make in the manner and form herein stated, while the same are in the hands of the common carrier and constitute a part of the interstate shipment of liquors in course of transportation and before delivery to the consignees.

VI.

Your orator further shows to the court that the alleged and pretended search warrants which were so issued by the Honorable Wm. H. Zwick, and other search or seizure warrants issued by other Justices of the Peace in the State of Oklahoma and Western District, as aforesaid, were issued, or claimed to be issued, pursuant to the provisions of the prohibition act or laws in the State of Oklahoma commonly known as the "Billups Bill," as aforesaid, but that said law has no application to the shipments so made by your orator, and intended hereafter to be made by it, because the provisions of the said Billups Bill, or prohibitory laws of the State of Oklahoma, in so far as the same apply, or are intended to apply, to interstate commerce shipments are unconstitutional, null, and void. And your orator further shows that said laws under which defendants claimed to be acting have not, if the same were valid and applied to shipments of the character hereinbefore set out, furnished any adequate protection to your orator either as to the goods which have already been wrongfully seized by the defendants or as to the goods which your orator intends to or may ship, and which the said defendants intend to and will seize, as hereinbefore set out, unless prohibited, as hereinafter prayed. That after defendants had wrongfully seized said goods, as aforesaid, under said pretended search warrants, or writs of seizure, your orator, seeking to protect self, appeared before the Honorable Wm. H. Zwick, Justice of the

Peace, upon the date on which the cause as to the status of the goods so seized was to be adjudicated, and on a hearing had before the said Justice of the Peace, and after the evidence had been introduced and the argument of counsel heard, the said defendants, purporting to represent the State of Oklahoma, said Justice determined that said liquors were not subject to seizure and confiscation under the laws of Oklahoma, and that the same are interstate commerce shipments, and ordered that said liquors be restored to their respective carriers from whom they were wrongfully taken, as aforesaid, and the said Wm. H. Zwick, as such Justice of the Peace, issued his order directing the officers of said County to carry said judgment into effect, and thereupon the Sheriff of said County did take possession of a part of said liquors, and restore a part thereof to the carriers from whose possession same had been taken. And a part thereof has

382 never yet been returned to said carrier from whom taken, and cannot be found. And said defendants openly assert their intention to continue their course of seizure and confiscation towards all liquors which may be hereafter shipped by your orator in the manner and form hereinbefore stated, and while the same are in the custody of the carriers, as aforesaid, and before delivery to the consignees.

Your orator further shows to the court that such course of conduct on the part of defendants, their deputies, agents, and assistants, and their successors in office, would necessitate a multiplicity in suits in order to protect the rights of your orator both as to the property already received and the property hereafter to be shipped by your orator, and will necessitate a great expense and outlay of money. That all of said defendants who are making said seizures, or directing the same, are financially irresponsible, and many of them are acting without bond, and those who are under bond are under bond not exceeding \$1000.00, and that large quantities of goods are being lost and stolen, or removed while in the possession of said defendants from warehouses in which said defendants claim to be storing said goods, and if said defendants are permitted to seize and confiscate the goods of this complainant which it intends hereafter to ship to its customers, the business of your orator would be entirely lost, and it will be compelled to cease engaging in its said interstate commerce, and will lose its profits largely exceeding the amount of \$5000.00, to which it is justly entitled.

383

VII.

Your orator further shows that unless said defendants, their deputies, agents, and assistants, and their successors in office are restrained by an order of this court as hereinafter more fully prayed, an irreparable injury will be inflicted upon the business of complainant in carrying on its said interstate commerce under the protection of the United States Constitution, as before shown, and for which it has no adequate remedy or relief at law, and a resort to an action at law would result in a great multiplicity of suits and vexatious litigation.

VIII.

Your orator further shows to the court that it is not engaged in soliciting orders for its said goods within the State of Oklahoma by maintaining agents therein or by the use of advertisement in the newspapers or other periodicals therein, and that all of its said goods so sold and shipped by it are clearly and properly marked, and are in compliance with the laws known as the pure food laws. And all orders received by it and sales made by it are the result and outgrowth of its legitimate and well established reputation throughout the United States for the manufacture of a high grade and pure product.

The premises considered, your orator prays that the defendants, Charles N. Haskell, as Governor of the State of Oklahoma, S. W. Stone, Acting Dispensary Agent, or Superintendent of State Dispensary, Fred S. Caldwell, as Counsel to the Governor, John M. Hays, as Assistant Counsel to the Governor, H. D. Garrison, Sheriff of Oklahoma County, Samuel Calhoun, Acting Sheriff of Oklahoma County, John Hubatka, Chief of Police of Oklahoma City, Oklahoma, G. F. Caffey, W. J. Garrett, and John Queenan, Constables of Oklahoma City, Oklahoma, their deputies, agents, and assistants, and their successors in office and each and all of the above named persons, F. F. Cain, S. W. Fenten, Wm. Murdoch, and all other persons after they have received knowledge thereof, be enjoined and restrained from further advising, aiding, abetting, encouraging, or instructing any of the defendants herein, or any other person or persons under their control, or within their employ, or within the employ of the State of Oklahoma, from seizing, taking, or in any manner molesting such interstate shipments of alcoholic liquors, or advising others that it is illegal to make shipments of alcoholic liquors into the State of Oklahoma in the manner and form hereinbefore referred to, and that they be enjoined and restrained from advising, aiding, abetting, encouraging or instructing any officer, their deputies, agents, or assistants, or any person or private citizen in the State of Oklahoma to seize any shipments that may now or hereafter be in the hands of any common carrier either in Oklahoma City or any other point in the State of Oklahoma which have been shipped or may be shipped in the manner and form hereinbefore set out and still in the hands of said carrier for transportation and delivery to the consignees thereof, and which said shipments have been made by this complainant in the manner and form hereinbefore set out, and that all of said persons be enjoined and restrained from further interfering with said shipments before delivery thereof to the consignees and surrender of the bill of lading to the carrier having the same in charge, and

384 that upon the final hearing of this cause the injunction herein prayed for may be made perpetual, for costs of this action, and for such other and further proper and general relief as to your Honors may seem just and proper in the premises. And your orator further prays that in the meantime a temporary restraining order issue, restraining and enjoining these defendants, and each of them, until further order of this court from performing any and all of the

385

acts hereinbefore set out, and that the temporary writ of injunction issue herein against each and all of the defendants, their successors in office, and all citizens of Oklahoma, as hereinbefore prayed.

And may it please your Honors to grant unto your orator a writ of subpoena, to be directed to the said Charles N. Haskell, as Governor of the State of Oklahoma, S. W. Stone, Acting Dispensary Agent, Fred S. Caldwell, Counsel to the Governor of Oklahoma, John Hays, Assistant Counsel to the Governor of Oklahoma, H. D. Garrison, Sheriff of Oklahoma County, Samuel Calhoun, Acting Sheriff of Oklahoma County, John Hubatka, Chief of Police of Oklahoma City, Oklahoma, G. F. Caffey, W. J. Garrett, and John Queen, Constables of Oklahoma County, Oklahoma, F. F. Cain, S. W. Fenton, and Wm. Murdoch, defendants herein, commanding them on a certain date and under a certain penalty in the said writ to answer personally, to be and appear before your Honors in this Honorable court and then and there full, true, and perfect answer make to and singular the premises, and further to perform and abide such orders, direction and decree therein as to your Honors shall seem meet, and shall be agreeable to equity and good conscience.

J. T. S. BROWN & SONS,

By JOHN H. MOSIER, *Solicitor.*

JOHN H. MOSIER,

Solicitor for Complainant.

386 STATE OF OKLAHOMA,
Logan County, ss:

T. S. Ward, of lawful age, being first duly sworn on oath, says that he is now and for six years last past has been the duly authorized agent of complainant above named traveling and representing the complainant in the States of Colorado, Texas, New Mexico, and Arizona; that he has read the above and foregoing bill of complaint and knows the contents thereof, and that the statements therein contained are true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes them to be true.

That the complainant is a corporation organized under the laws of the State of Kentucky, having its principal place of business in Louisville, in said State, and is now engaged in business as stated in the above and foregoing complaint; that none of the principal officers of complainant are present in this district, or in the State of Oklahoma, at this time, and that the matters stated in said complaint are more particularly within the knowledge of affiant than any other officer or agent of said complainant.

T. S. WARD

Subscribed and sworn to before me this 6th day of November 1909.

[SEAL.]

H. L. McCracken,

Notary Public

My commission expires 2/3-1912.

Endorsed: No. 493. In the Circuit Court of the United States, Western District of Oklahoma. J. T. S. Brown & Sons, Complainant, vs. Charles N. Haskell, as Governor of the State of Oklahoma, et al., Defendants. Bill of Complaint. Filed Nov. 6, 1909. Harry L. Finley, Clerk. John H. Mosier, Muskogee, Okla., Att'y for complainant.

387 In the Circuit Court of the United States Within and for the Western District of the State of Oklahoma.

In Equity. # 496.

J. T. S. BROWN & SONS, a Corporation, Complainant,

vs.

CHARLES N. HASKELL, as Governor of the State of Oklahoma; S. W. Stone, Superintendent of the State Dispensary; Fred S. Caldwell, Counsel to the Governor of Oklahoma; John M. Hays, Assistant Counsel to the Governor of Oklahoma; Samuel Calhoun, Acting Sheriff of Oklahoma County; H. D. Garrison, the Duly Appointed and Qualified Sheriff of Oklahoma County; John Hubatka, Chief of Police of Oklahoma City, Oklahoma; G. F. Caffey, W. J. Garrett, and John Queenan, Constables for Oklahoma City, Oklahoma; and F. F. Cain, S. W. Fenton, Wm. Murdoch, and the Successors in Office of Each and Every One of the Above Named Defendants.

Notice of Hearing Application for Injunction, Etc.

To the Defendants above named and each and all of them:

You and each of you will hereby take notice that the above named complainant has filed in the office of the clerk of the above named Court its complaint praying that a writ of injunction and restraining order issue against you and each of you, enjoining and restraining you and each of you from making assault upon, removing, destroying, or in any manner interfering with any intoxicating liquors shipped into the Western District of Oklahoma while the same remain in the hands of the common carrier having same in its custody and while the same constitutes interstate commerce and before same has been delivered to the consignee thereof, and for other relief prayed for in said complaint, and that said cause will be brought on for hearing on complainant's application for a temporary injunction before the said Court at Guthrie, Oklahoma, or before the Hon. John H. Cotteral, Judge of said Court, at Guthrie, Oklahoma, at Two o'clock P. M. on Monday the 15th day of November 1909, or as soon thereafter as complainant can be heard, at which time and place you can appear and show cause, if any you have, why said temporary injunction and other relief should not be granted as prayed in said complaint.

Dated this 8th day of November 1909.

JOHN H. MOSIER,

Counsel for Complainant.

388 STATE OF OKLAHOMA,
Oklahoma County, ss:

John H. Fried, being first duly sworn, deposes and says, that on the — day of November, 1909, he served the above and foregoing notice on the following named defendants in the above entitled cause, by delivering to each of them, in Oklahoma County, Oklahoma, a true copy thereof, to-wit: Wm. Murdoch, S. W. Fenton, W. J. Garrett, F. F. Cain, J. M. Hays, H. D. Garrison, sheirff; Samuel Calhoun, sheriff: John Hubatka, W. D. Turner.

JOHN H. FRIED.

Subscribed and sworn to before me this 12th day of November 1909.

[SEAL.]

JOHN HOLZAPFEL,
Notary Public.

My commission expires Jan. 14th 1911.

#496, In the Circuit Court of the United States for the Eastern District of Oklahoma. J. T. S. Brown & Sons, Complainant, vs. Charles N. Haskell, et al., Defendants. Notice of Hearing application for injunction, etc. Filed Nov. 16, 1909. Harry L. Finely, Clerk. John H. Mosier, Att'y. Muskogee, Okla.

389 In the Circuit Court of the United States Within and for the Western District of the State of Oklahoma.

In Equity. # 496.

J. T. S. BROWN & SONS, a Corporation, Complainant,
 vs.

CHARLES N. HASKELL, as Governor of the State of Oklahoma; S. W. Stone, Superintendent of the State Dispensary; Fred S. Caldwell, Counsel to the Governor of Oklahoma; John M. Hays, Assistant Counsel to the Governor of Oklahoma; Samuel Calhoun, Acting Sheriff of Oklahoma County; H. D. Garrison, the Duly Appointed and Qualified Sheriff of Oklahoma County; John Hubatka, Chief of Police of Oklahoma City, Oklahoma; G. F. Caffey, W. J. Garret, and John Queenan, Constables for Oklahoma City, Oklahoma; and F. F. Cain, S. W. Fenton, Wm. Murdoch, and the Successors in Office of Each and Every One of the Above Named Defendants.

Notice of Hearing Application for Injunction, Etc.

To the Defendants above named and each and all of them:

You and each of you will hereby take notice that the above named complainant has filed in the office of the Clerk of the above named Court its complaint praying that a writ of injunction and restraining order issue against you abd each of you, enjoining and

restraining you and each of you from making assault upon, removing, destroying, or in any manner interfering with any intoxicating liquors shipped into the Western District of Oklahoma while the same remain in the hands of the common carrier having same in its custody and while the same constitutes interstate commerce and before same has been delivered to the consignee thereof, and for other relief prayed for in said complaint, and that said cause will be brought on for hearing on complainant's application for a temporary injunction before the said Court at Guthrie, Oklahoma, or before the Hon. John H. Cotteral, Judge of said Court, at Guthrie, Oklahoma, at Two o'clock P. M. on Monday the 15th day of November 1909, or as soon thereafter as complainant can be heard, at which time and place you can appear and show cause, if any you have, why said temporary injunction and other relief should not be granted as prayed in said complaint.

Dated this 8th day of November 1909.

JOHN H. MOSIER,
Counsel for Complainant.

390 STATE OF OKLAHOMA,
Logan County, ss:

John H. Mosier, being first duly sworn, deposes and says that on the date of the filing of the petition in the office of the clerk of the United States Circuit Court for the Western District of Oklahoma, in the case of J. T. S. Brown & Sons vs. Charles N. Haskell, et al., he served a copy of the complaint in said cause on Fred S. Caldwell, Special Counsel to the Governor, and it was agreed between said Caldwell and affiant that said cause should be taken up and heard on complainant's application for temporary injunction at 2 o'clock P. M. on Monday, Nov. 15th, 1909, if agreeable to the court to hear same at that time; and that affiant would advise said Caldwell whether the court would hear said cause at the time stated; that affiant then saw Honorable John H. Cotteral, and learned that said cause could probably be heard on said application at that time, and thereupon notified said Caldwell by mailing him copy of the attached notice, and also by letter, that on the 10th day of Nov. 1909, affiant requested said Caldwell to consent to a continuance of the hearing on said application until the 16th day of Nov., 1909, and to arrange with the court to hear the same at that time; thereafter, and on the 13th day of Nov., 1909, affiant received from said Caldwell telegram dated at Guthrie, Okla., Nov. 13th, 1909, addressed to John H. Mosier, Iowa Bldg., Muskogee, Okla., as follows: "Continuance to 16th OK. Have not seen Judge. You arrange that."

391 Affiant says that it was agreed that said Caldwell would waive notice in the usual way in said cause, and that in consideration of said waiver and the issuance of the usual rule to show cause affiant agreed on behalf of complainants that a restraining order would not be applied for pending hearing on said application for temporary injunction.

Affiant says that notices were served on all of the defendants

herein, as herein shown and as shown by additional proof on file herein.

JOHN H. MOSIER.

Subscribed and sworn to before me this 17th day of November 1909.

[SEAL.]

HARRY L. FINLEY,
Clerk U. S. Circuit Court, Western District of Oklahoma.

Endorsed: 496. United States Circuit Court, Western District Oklahoma. J. T. S. Brown & Sons, Complainants, vs. Charles N. Haskell et al., Defendants. Affidavit. Filed Nov. 17th, 1909. Harry L. Finley, Clerk.

392 STATE OF OKLAHOMA,
Logan County, ss:

T. S. Ward, of lawful age, being first duly sworn on oath, says that he is now and for six years last past has been the duly authorized agent of complainant above named traveling and representing complainant in the States of Colorado, Texas, New Mexico, and Arizona: and is authorized to make this affidavit that he has read the bill of complaint filed in the above entitled cause by complainant, and knows the contents thereof, and that the statements therein contained are true within the knowledge, except as to the matters which are herein stated on information and belief, and as to those matters he believes them to be true.

That the complainant is a corporation organized under the laws of the State of Kentucky, having its principal place of business at Louisville, in said State, and is now engaged in said business as stated in said complaint; and that the sales and transactions set forth in said complaint are consummated and made in the State of Kentucky, and not in the State of Oklahoma, and are made in the manner and form stated in said complaint; that none of the principal officers of complainant are present in this District, or in the State of Oklahoma, at this time, and that the matters stated in said complaint are more particularly within the knowledge of affiant than any other officer or agent of said complainant.

T. S. WARD.

Subscribed and sworn to before me this 6th day of November, 1909.

[SEAL.]

H. L. McCRACKEN,
Notary Public.

My commission expires 2/3-1912.

393 STATE OF OKLAHOMA,
County of Oklahoma, ss:

Charles Ross, of lawful age, being first duly sworn on oath, deposes and says that he is the Chashier in the Freight office of the Missouri, Kansas & Texas Railway Company at Oklahoma City, in

That during the year of 1909, and prior thereto, and during the time affiant has been Cashier of the Missouri, Kansas & Texas Railway Company, at the station above named, J. T. S. Brown & Sons, of Louisville, Ky., have been making numerous shipments of whiskey and liquors from Louisville, Ky., to Oklahoma City, Oklahoma, all of which have been in small quantities consigned to various and sundry persons, and that said J. T. S. Brown & Sons have at no

That during the time above mentioned, and particularly during the year of 1909, H. D. Garrison, Sheriff of Oklahoma County, Oklahoma, John Hubatka, Chief of Police of Oklahoma City; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. W. Cain, S. W. Fenton, Wm. Murdoch, B. J. Waugh, Fred S. Caldwell, and other public officers, or persons claiming to be public officers whose names and official character are to affiant unknown, have been repeatedly and almost constantly making assaults upon and seizing from the freight office of the Missouri, Kansas & Texas Railway Company in the city of Oklahoma City, State of Oklahoma, Liquors shipped by various dealers from various and divers states other than Oklahoma, to various and diverse persons residing in Oklahoma, and particularly at Oklahoma City, Oklahoma, and taking and carrying said liquors away from and out of the possession of the said Missouri, Kansas & Texas Railway Company, and said liquors were still in its possession and

15—14

and that on at least two or more occasions the officers and public officials above referred to, or some of them whose names and official positions are to alliant unknown, have seized and taken from the said Railway Company shipments of liquors made by the said J. T. S. Brown & Sons to persons at Oklahoma City named in the bill of lading which had not been surrendered to said Railway Company by the consignees named therein, or by anyone else, and on which the freight and carriage charges had not been paid, and that no- all of said liquors have yet been returned to said Railway Company, although a part thereof has been returned under the orders and direction of Wm. H. Zwick, Justice of the Peace, within and for Oklahoma City; that all of said seizures of liquors have been taken from said Railway Company and the consignees named in the bill of lading covering same on search warrants of writs of seizure sworn out and issued against John Doe, a fictitious person; that said officials disregarded the interstate character of said shipments, and are continuin^g to disregard the nature and character of said shipments, and to seize, take from, and deprive the said Railway Company, and the persons named in the bill of lading covering said shipments of the said liquors.

396

CHAS. ROSS.

Subscribed and sworn to before me this 8th day of November, 1909.

JAS. H. SMITH,
Notary Public.

[SEAL.]

My commission expires May 18th, 1912.

#496. In the United States Circuit Court for the Western District of Oklahoma. J. T. S. Brown & Sons, Plaintiff, vs. Charles N. Haskell, Governor, et al. Defendants. Affidavits offered by Plaintiff in Support of its Application for Temporary injunction. Filed Nov. 17th, 1909. Harry L. Finley, Clerk. John H. Mosier Att'y. Muskogee, Okla.

397 In the United States Circuit Court, Western District of Oklahoma.

Equity. No 496.

J. T. S. BROWN & SONS, Complainants,
vs.

CHARLES N. HASKELL et al., Defendants.

Temporary Injunction Order.

The above entitled cause came on for hearing upon complainants' application for temporary injunction on this 17th day of November, 1909, pursuant to the notice given to defendants as shown by proof on file herein. The complainants appeared by *its* solicitor,

John H. Mosier, and the defendants named in the complaint not appearing either in person or by counsel, and it appearing to the court that the defendants have been duly notified of the time, place, and hearing on said application, and that this matter is now properly before the court for hearing.

The complainants, J. T. S. Brown & Sons, thereupon introduced *its* bill of complaint, duly sworn to, and offered and introduced in evidence affidavits of various parties in support of *its* complaint, and thereupon rested. The defendants not appearing, and offered no testimony in contradiction thereof.

Thereupon this cause was presented on behalf of complainants, and, after considering the bill of complaint and affidavits offered in support thereof, the court finds that the relief prayed for by the complainants should be granted, and a temporary injunction should

issue as against the defendants hereinafter named.

398 It is therefore ordered this 17th day of November, 1909, that Fred S. Caldwell, J. M. Hays, H. D. Garrison, Sheriff of Oklahoma county, Okla.; Samuel Calhoun, Acting Sheriff of Oklahoma County, Oklahoma; John Hubatka, Chief of Police, of Oklahoma City, Oklahoma; G. F. Caffey, W. J. Garrett, F. F. Cain, S. W. Fenten and William Murdoch, and each of them, their deputies, agents, assistants, and successors in office, and all persons acting by or under them, or either of them, and all other officers, persons, and citizens of the Western District of Oklahoma who shall have knowledge hereof, be and they hereby are enjoined until further order of this court from seizing, or causing to be seized, either directly or indirectly, any intoxicating liquors shipped by the complainants, J. T. S. Brown & Sons, from the State of Kentucky to actual bona fide consignees in the Western District of the State of Oklahoma while in the possession of the common carrier or transportation companies having same in charge, or from disturbing or molesting the said common carrier or transportation companies in their possession thereof before deliver- thereof to the consignee. Provided, however, that this order shall not apply to any liquors shipped in violation of Section 3449 of the Revised Statutes of the United States, or any other Act of Congress, or to any liquors which are adulterated or misbranded within the meaning of the Act of Congress of June 30, 1906, Chapter 3915, 34 Stat. At Large, 768, commonly known as the "Pure Food & Drug Act."

399 This order to become effective upon the complainants, J. T. S. Brown & Sons, executing and filing a good and sufficient bond within twenty days from this date in the sum of \$2,500.00 to be approved by the Clerk of this Court, indemnifying the defendants herein against any damage that may be sustained thereby in the event it should be determined this order should not have been issued.

To all of which order and decree the defendants, and each of them, are granted an exception.

This order to be amended or added to from time to time as occasion may require.

JOHN H. COTTERAL, Judge.

#496. Circuit Court of United States, Western District of Oklahoma. J. T. S. Brown & Sons, Complainants, vs. Charles N. Haskell, et al., Defendants. Temporary injunction order. Filed Nov. 7th, 1909, Harry L. Finley, Clerk. E. O. B. page 620.

400 In the Circuit Court of the United States Within and for the Western District of Oklahoma.

No. —. In Equity.

J. T. S. BROWN & SONS, a Corporation, Complainants,

v.

CHARLES N. HASKELL et al., Defendants.

Appearance of Fred S. Caldwell as Solicitors for Respondents.

To Harry L. Finley, Clerk of the Honorable Circuit Court of the United States within and for the Eastern District of Oklahoma:

You will please enter my appearance as solicitor and attorney of record for all of the respondents in the above named cause.

FRED S. CALDWELL.

Counsel to the Governor of the State of Oklahoma.

Endorsed: No. 496. U. S. Circuit Court, Western District of Okla. J. T. S. Brown & Sons v. C. N. Haskell, et al. Appearance. Filed Jan. 3, 1910. Harry L. Finley, Clerk.

401 UNITED STATES OF AMERICA,

State of Oklahoma, Western District, ss:

In the Circuit Court of the United States Within and for said District.

No. —. In Equity.

J. T. S. BROWN & SONS, a Corporation, Complainant,

v.

CHARLES N. HASKELL, as Governor of Oklahoma; S. W. STONE, Superintendent of the State Dispensary; Fred S. Caldwell, Counsel to the Governor of Oklahoma; John M. Hays, Assistant Counsel to the Governor of Oklahoma; Samuel Calhoun, Acting Sheriff of Oklahoma County, Oklahoma; H. D. Garrison, the Duly Appointed and Qualified Sheriff of Oklahoma County, Oklahoma; John Hubatka, Chief of Police of Oklahoma City, Oklahoma; G. F. Caffey, W. G. Garrett, and John Queenan, Constables for Oklahoma City, Oklahoma, and F. F. Cain, S. W. Fenton, Wm. Murdock, and the Successors in Office of Each and Every One of the Above Named, Defendants.

Demurrer for Lack of Jurisdiction and Equity.

These respondents, Charles N. Haskell, S. W. Stone, Fred S. Caldwell, John M. Hays, Samuel Calhoun, H. D. Garrison, John

batka, G. F. Caffey, W. J. Garrett, John Queennan, F. F. Cain, W. Fenton, Wm. Murdock, and the successors in office of each and every one of the above named, by protestation, not confessing or acknowledging all, or any of the matters or things in the said bill of complaint contained, to be true, in such manner as the same are therein set forth and alleged, demur to the said bill; and for cause of demurrer show:

I.

That it appears by the complainants' own showing by the said bill that they are not entitled to the relief prayed by said bill against these respondents, or any of them.

II.

That it appears from said complainants' bill of complaint that their business operations which they seek to have protected by decree of this Honorable Court, are carried on and conducted in direct violation of the penal laws of the United States of America, to-wit: a violation of Sections 238, 239 and 240 of an Act of Congress of March 4th, 1909. (35 Stat. L. 1136-7.)

III.

That it appears from complainants' said bill of complaint that this court has no jurisdiction to hear and determine this action, and that the relief prayed for is sought in direct violation of the Eleventh Amendment to the Constitution of the United States, and of Section 720 of the Revised Statutes of the United States.

IV.

That complainants' said bill of complaint is wholly without equity.

Wherefore, and for divers other good causes of demurrer in said bill, these respondents demur thereto, and they and each of them pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to complainants' said bill; and they and each of them humbly pray to be hence dismissed with their reasonable costs in their *half* sustained.

FRED S. CALDWELL,
Solicitor for Respondents.

Verification.

STATE OF OKLAHOMA.

County of Logan, ss:

Fred S. Caldwell, being first duly sworn, on oath says: That he is the solicitor for the respondents to the foregoing demurrer in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point of law; and on behalf of said respondents, and each of them, says, that the same is not interposed for delay.

FRED S. CALDWELL.

Subscribed and sworn to before me this 3rd day of January, 1910.

[SEAL.]

HARRY L. FINLEY,
Clerk U. S. Circuit Court.

#496, U. S. Circuit Court, Western District, Okla. J. T. S. Brown & Sons, v. C. N. Haskell, et al. Demurrer. Filed Jan. 3, 1910. Harry L. Finley, Clerk.

404 In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. —. In Equity.

J. T. S. BROWN & SONS, a Corporation, Complainant.

vs.

CHARLES N. HASKELL, as Governor of Oklahoma; S. W. STONE, Superintendent of the State Dispensary; Fred S. Caldwell, Counsel to the Governor of Oklahoma; John M. Hays, Assistant Counsel to the Governor of Oklahoma; Samuel Calhoun, Acting Sheriff of Oklahoma County, Oklahoma; H. D. Garrison, the Duly Appointed and Qualified Sheriff of Oklahoma County, Oklahoma; John Hubatka, Chief of Police of Oklahoma City, Oklahoma; G. F. Caffey, W. G. Garrett, and John Queenan, Constables for Oklahoma City, Oklahoma, and F. F. Cain, S. W. Fenton, Wm. Murdock, and the Successors in Office of Each and Every One of the Above Named, Respondents.

Stipulation.

It is hereby stipulated and agreed by and between the parties hereto that the time within which the complainant shall cause the Demurrer interposed by the respondents in this cause, to be set down for hearing under the rule and the application of the rule herein, shall be extended until after this Honorable Court shall have rendered its decision and passed on the legal questions involved in other suits now pending in this Honorable Court and which have been presented, argued and — now under consideration, and that after said questions have been passed on by the Court that this cause may then be set down for hearing on the Respondents' Demurrer, filed herein, at such time and on such notice as the parties may agree or the Court may order.

405-407

JOHN H. MOSIER,

Solicitor for Complainants.

FRED S. CALDWELL,

Solicitors for Respondents.

#496. In the Circuit Court of the U. S. Western District of Oklahoma. J. T. S. Brown, & Sons, vs. Charles N. Haskell, et al. Stipulation. Filed Jan. 27th, 1910. Harry L. Finley, Clerk. By M. V. Haws, Deputy. John H. Mosier, Attorney-at-Law. Muskogee, Oklahoma. E. O. B. #2 page 64.

408 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western
 District of Oklahoma.

In Equity. No. 511.

THIXTON, MILLETT & COMPANY, a Corporation. Complainant,
 vs.

S. W. STONE, State Dispensary Agent; JOHN HAYES, Assistant Coun-
 sel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Con-
 stable; John Queenan, Constable; F. F. Cain, S. W. Fenton, Wil-
 liam Murdock, J. T. Brown and A. S. Peacock, Defendants.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States
 for the Western District of Oklahoma:

Your complainant, Thixton, Millett & Company, which is a citi-
 zen of the United States and of the State of Kentucky, and which is
 a corporation duly incorporated under and by virtue of the laws
 of the State of Kentucky, and is a resident and inhabitant of the said
 state of Kentucky, brings this, its bill of complainant, against S. W.
 Stone, John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, S.
 W. Fenton, F. F. Cain, William Murdock, T. J. Brown and A. S.
 Peacock, hereinafter styled defendants, and occupying the official
 positions hereinafter more fully set forth, and all of which defend-
 ants are citizens, residents and inhabitants of the State of Oklahoma,
 in the Western District thereof, and complaining of the said defend-
 ants and each of them, this complainant says:

I.

409 That your orator is engaged in business as a dealer in alco-
 holic and intoxicating liquors, and has its office and place of
 business in the city of Louisville, in the State of Kentucky,
 and has built up and enjoys a large and lucrative business in the sale
 of said liquors in the State of Kentucky, and a part of its business
 consists, in a large part, of the sale of liquors in the State of Ken-
 tucky to customers residing outside the State of Kentucky, including
 customers residing in the State of Oklahoma. That its principal
 method and custom of making shipments into other states, including
 the State of Oklahoma, is to receive mail orders for said shipments
 direct from its customers outside the state for sales and shipments of
 liquors to be made in Kentucky into said state, and after said orders
 are accepted by your orator to deliver said liquors to various rail-
 road companies and other common carriers transporting freight from
 said state of Kentucky to such other state for hire for transportation
 from the said shipping point, to-wit: Louisville, in the said State of
 Kentucky, to the various points in the State of Oklahoma where said

customers reside, the said common carriers agreeing to transport said liquors by interstate shipment from Louisville in said State of Kentucky, to said points in Oklahoma, and there to deliver to said customers in Oklahoma the said liquors; and in all cases where said liquors are shipped as aforesaid from said point in Kentucky to Oklahoma, said sales are made outside the State of Oklahoma and delivered to the consignee in the said State of Oklahoma by the carrier, as aforesaid.

Your orator further shows that its custom is after delivering said liquors to said carrier for shipment as aforesaid in said State of Kentucky, to Oklahoma, to receive from the carrier, a bill of lading, which bill of lading is generally made out in the following form, substantially, and forward said bill of lading to the purchaser, the said bill of lading being in substance about as follows:

“Received from ——— in apparent good order, the following orders, marked ——— to be delivered in like good order. Louisville, Kentucky, ——— by ——— Railway. To shipper's order. Notify ———. Marks ———. No. ———. Article ———. Freight prepaid.”

the railway company or other carrier filling in the blanks so as to agree with the dates, name of purchaser, character of goods, and the name of the consignee to be notified and the point in the State of destination named in the bill of lading; and that the custom and understanding between the parties to said transaction is that it gives to the shipper the right to stop said goods at any time before said goods are delivered to the purchaser at their destination in Oklahoma, and before the surrender of the bill of lading and the goods are not delivered to said purchaser or consignee until they arrive at their destination and are delivered to the consignees until the production and surrender of the said bill of lading and the payment of the draft for the purchase price which is attached to said bill of lading by complainant at the time that the same is sent forward to some bank for the purpose of being delivered to the purchaser at the destination of said liquors upon the payment of said draft by said purchaser.

Your orator further shows that at this time complainant has received many orders for intoxicating liquors to be sold by it in Kentucky and shipped by carrier as aforesaid to various points in the Western District of Oklahoma to be delivered there to the consignees in the manner and form hereinbefore set out, and the legitimate profits of said orders so received by it for shipments to be made as aforesaid into the State of Oklahoma and the Western District thereof, will be largely in excess of two thousand five hundred dollars (\$2,500.00), and it has accepted said orders and expects in the proper and legitimate exercise of its right to engage in commerce with the citizens of Oklahoma, to continue its said business and to earn
411 its said legitimate profits, and to continue to accept orders at its office in Louisville for sales in Kentucky and deliveries in Oklahoma as aforesaid, and that it is not participating in any unlawful sale of any intoxicating liquors in the State of Oklahoma,

and are only engaged in its said legitimate business of engaging in interstate commerce, as aforesaid.

II.

Your orator further shows that the defendant Stone is the duly appointed and qualified dispensary agent of the State of Oklahoma, whose duty it is under the law to direct his subordinate agents in the seizure and confiscation of intoxicating liquors kept for any unlawful purposes within said state. That the defendant John Hayes is the duly appointed and qualified assistant counsel to the governor of the State of Oklahoma. That the defendants Caffey, Garrett, and Queenan are the duly elected and qualified constables in and for the city of Oklahoma City, said county and state. That the defendant Brown is a deputy sheriff in Oklahoma County in the State of Oklahoma, and the defendants Fenton, Murdock, Cain and Peacock are, or claim to be, some kind of state enforcement officers, and are employed by the defendant Stone in his official capacity as aforesaid, and are acting under and pursuant to the direction, control and supervision of the said defendant Stone and the said defendant Hayes in the commission of the wrongs and trespasses on the property of plaintiff as hereinafter more fully set out. That the defendants Stone and Hayes, claiming to be enforcing the provisions of a certain act of the Legislature of the State of Oklahoma, known as the Billups Bill, and otherwise known as the Enforcing Act, which alleged bill has for its object, or claims to have for its object, the prohibition and prevention of the bartering, selling or giving away of intoxicating liquors in the State of Oklahoma, and the enforcement of said law, have instructed the other defendants herein,

412 and many other and numerous parties, unknown to this complainant, that all liquor shipments made by this complainant in the manner and form hereinbefore set forth, are illegal and in violation of said enforcement act, and that said alleged act of the Oklahoma legislature prohibiting the bartering, selling or giving away of said intoxicating liquors applies to and includes within its provisions all shipments of liquors which are known as interstate shipments, while the same are still in the hands of the carrier for transportation and delivery before the surrender of the bill of lading and delivery to the consignees, and which are made in the manner and form hereinbefore set out; and said Stone and Hayes and their other agents, acting under their instructions, directions and orders, have ordered, authorized and directed said Cain, Fenton, Murdock and Peacock, and numerous other parties whose names are unknown to complainant, to seize and confiscate and appropriate to their own use and to the use of the State of Oklahoma, all liquors so shipped by complainant in the manner and form hereinbefore set forth while the same are in the hands of the railway companies in the State of Oklahoma, and before delivery to the consignees as aforesaid, and while in course of transportation as aforesaid, whereby it is their purpose and intention, and the intention and purpose of each of them to deprive complainant of the value and possession of said goods which they intend to ship as aforesaid, and prevent complain-

ant from engaging in the business of making interstate shipments in the State of Oklahoma, as hereinbefore described.

III.

That heretofore upon divers dates and occasions during the fall of 1909, complainant pursuing its said methods of doing business aforesaid, and following its right to engage in legitimate interstate commerce with the citizens of Oklahoma, did ship from the State of Kentucky to many persons residing in Oklahoma, at various points therein, and especially at Oklahoma City, certain intoxicating liquors, aggregating in value over two thousand dollars (\$2,000.00). That said shipments were made upon orders received and accepted in Kentucky, and the liquors were sold in Kentucky and delivered in said State of Kentucky to various railway companies and other carriers for transportation and delivery to said points in Oklahoma, in the Western District thereof, and Oklahoma City, and while said liquors which were so intended for delivery in Oklahoma City, where in the course of transportation in the hands of carriers in Oklahoma City, before consummation of said interstate shipment by sending to consignees the bill of lading and delivery to consignees, the said defendants Caffey, Queenan, Garrett, and others acting under the immediate direction and control of the defendant Hayes, Fenton, Cain Murdock and Stone, and of other parties whose names are unknown, and all of them acting under, or claiming to be acting under and by virtue of certain search warrants issued out of the Justice Court of Oklahoma County, by one William H. Zwick, Justice of the Peace, did seize all of said liquors which were then in the hands of said carriers, and by force of arms deprived the said carriers of the possession thereof, with the intent to permanently confiscate the liquors to the use of said defendants and to the use of the State of Oklahoma; and did publicly assert their intention to permanently confiscate the said liquors, and all the defendants last mentioned, including the defendant Brown, who is a deputy sheriff, do intend, and do openly assert their intention to continue to seize and confiscate all liquors which this complainant may hereafter make in the manner and form set out while the same are in the hands of common carriers, and constitute a part of an interstate shipment of liquors, in course of transportation, and before delivery to the consignees.

414

IV.

Your orator further shows that the alleged and pretended search warrants which were so issued by the Honorable William H. Zwick, Justice of the Peace, as aforesaid, were issued, or claimed to be issued pursuant to the provisions of the prohibition act of Oklahoma, known as the Billups Bill as aforesaid, but that the said Billups Bill has no application to the shipments so made by the complainant and intended hereafter to be made by it, because the provisions of the said Billups Bill insofar as the same is applied or intended to be applied to interstate commerce shipments, are unconstitutional and

void and of no effect. And your orator further shows that said Billups Bill, under which defendants claim to be acting, even if the same were valid, and applied to shipments of the character hereinbefore set out, furnishes no adequate protection to complainant whatever, either as to the goods which have already been wrongfully seized by the defendants, or as to the goods which this complainant intend- to ship, and which the said defendants intend to seize as hereinbefore set out. That after said defendants had wrongfully seized said goods as aforesaid under said pretended search warrants, the complainant, seeking to protect itself, appeared before the Honorable William H. Zwick, Justice of the Peace, and upon the day upon which said cause was set for trial, and upon the day upon which the cause as to the status of the goods so seized were to be adjudicated, and on said hearing, said William H. Zwick, after hearing the evidence, and after hearing counsel for said defendants purporting to represent the State of Oklahoma, and counsel for this complainant, adjudicated that said liquors were not subject to seizure and confiscation under the laws of Oklahoma, and that the same were interstate commerce shipments, and ordered that said liquors be restored to the respective carriers from whom they were wrongfully taken, as aforesaid. That said William H. Zwick thereupon issued his order directing the Sheriff of Oklahoma County to carry said
415 judgment to effect, and that the sheriff of Oklahoma County did take possession of a part of said liquors and restore the same to the carrier from whose possession they were taken. And thereupon immediately after the same were restored to the said carrier, and before the same were delivered to the original consignees, the above named defendants, Hayes, Fenton, Cain, Murdock and Caffey, again seized said liquors under certain pretended search warrants which were obtained from one J. J. Beall in the Justice Court, regardless of the judgment rendered in favor of said liquors and of this complainant by the Honorable William H. Zwick, thereby necessitating another trial before the said Beall, as Justice of the Peace, for the said issue tried before the said Zwick; and this complainant avers the facts to be that said defendants openly assert their intentions to continue such course of seizures against all liquors that may be shipped in the manner and form hereinbefore set out, claiming the right to do so under certain pretended search warrants to be issued by another court, and that said defendants Hayes, Fenton, Cain and Peacock, claiming to be acting under the directions and instructions of the defendants Stone and Hayes, openly assert their intention to continue such course of seizures and attempted confiscation towards all liquors which may be hereafter shipped by this complainant in the manner and form hereinbefore set out, and while same are in the custody of the carriers as aforesaid, and before delivery to the consignee. Your orator further shows that such course of conduct upon the part of defendants would necessitate a multiplicity of suits in order to protect the rights of this complainant in the property hereafter to be shipped by complainant, and will necessitate a great expense and outlay of money. That all of the said defendants who are making said seizures are irresponsible par-

ties, financially. That none of them are under bond, except the said constables, who are under a small bond of one thousand dollars (\$1,000.00) each, and that large quantities of goods are being daily stolen, or claimed to be stolen, from the warehouses in which said parties are storing said goods, and if said parties are permitted to seize and confiscate said goods of this complainant which they intend hereafter to ship to its customers, the business of this complainant would be utterly ruined, and that they will be compelled to cease engaging in interstate commerce and will lose thousands of dollars of profits, to which they are justly entitled, and that this complainant can obtain absolutely no redress in the courts of Oklahoma, as aforesaid, because, under the provisions of said alleged Billups Bill no action of replevin will lie and this complainant is compelled to apply to this court and appeal to its equitable powers for relief in order to protect the rights and privileges guaranteed to it under the laws and constitution of the United States, and that irreparable damage and injury will be inflicted upon the business of this complainant by reason of the wrongful acts hereinbefore set out.

V.

Your orator further shows that it is claimed by the defendant that all intoxicating liquors found in the State of Oklahoma, which have been shipped by complainant in the manner and form hereinbefore set out, and even though still in the course of transportation and part of interstate shipments, are subject to seizure, confiscation under the laws of Oklahoma, and said pretended seizures are made under and by virtue of said claim.

The premises considered, complainant prays that the defendant S. W. Stone, dispensary agent, and John Hayes, be enjoined and restrained from further advising, aiding, abetting, encouraging or instructing any of the other defendants herein, or any other person or persons under their control or within their employ, or within the employ of the State of Oklahoma, that it is illegal to make shipment of alcoholic liquors into the State of Oklahoma in the manner and form heretofore referred to, and that they be enjoined and restrained from advising, aiding or abetting, encouraging or instructing any of the other defendants herein, or any other person or persons in their employ, or in the employ of the State of Oklahoma, to seize any shipments that may now be in the hands of any common carrier, either in the city of Oklahoma City or any other point in the State of Oklahoma, which may have been shipped in the manner and form hereinbefore set out, and are still in the hands of said carriers for transportation and delivery to consignees, and which said shipments have been made by this complainant in the manner and form hereinbefore set out.

Complainant further prays that the defendants Peacock, Cain, Murdock, Fenton, Caffey, Garrett and Brown, and all persons acting under their authority or control, be enjoined and restrained from seizing any shipments or parts of shipments of intoxicating liquors.

which may be now in the hands of any common carrier in Oklahoma City or any other point in the State of Oklahoma, and which have been shipped by this complainant to consignees in the State of Oklahoma in the manner and form hereinbefore set out while the same are in the hands of such carriers for transportation and before delivery to the consignees and surrender of the bill of lading and while said shipments are interstate shipments. That upon the final hearing of this cause the injunction herein prayed for may be made perpetual and for such other and further and general relief as to your Honors may seem meet and just in the premises. And your orator further prays to grant unto your orator, a writ of subpoena issue- out of and under the seal of this honorable court, to be directed to the said S. W. Stone, dispensary agent, John Hayes, assistant counsel to the Governor, G. F. Caffey, constable; W. J. Garrett, constable; John Queenan, constable; Brown, deputy sheriff, and to said pretended enforcement officers Peacock, Cain, S. W. Fenton and William Murdock, commanding them on a certain day and date under a certain penalty, in said writ personally to be

418 and appear before your honors and this honorable court, and then and there a full, true and perfect answer make to all and every premises, and further to abide, stand by, and perform all orders made by this honorable court, and that in the meantime a temporary restraining order restraining and enjoining these defendants and each of them until the further order of this court from performing any and all of the acts hereinbefore set out.

Your orator further prays that this bill may be amended from time to time by adding the names of such parties thereto as causes therefore may arise, and the said parties are engaged with the other parties herein in assaults upon the property of this complainant in the manner hereinbefore set forth. And your orator will forever pray in the premises.

THIXTON, MILLETT & CO., INC.,
 By JNO. THIXTON, JR., *President*.
 GEO. H. GIDDINGS AND
 E. J. GIDDINGS,
Solicitors for Complainant.

419 UNITED STATES OF AMERICA,
Western District of Oklahoma:

Jno. Thixton, Jr., being duly sworn, deposes and says that he is President of the complainant, Thixton, Millett & Company, a corporation; that he has read the above and foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

JNO. THIXTON, JR.

Subscribed and sworn to before me this 22nd day of November, 1909.

MARY S. HILL,
Notary Public.

[SEAL.]

My Commission expires Nov. 16, 1911.

Endorsed: No. 511. In the U. S. Circuit Court, Western District, Oklahoma. Thixton, Millett & Company, Plaintiff vs. S. W. Stone et al., Defendants. Bill of Complaint. Filed Nov. 23, 1909. Harry L. Finley, Clerk. Giddings & Giddings, Attorneys for Complainant.

420 UNITED STATES OF AMERICA,
State of Oklahoma:

In the Circuit Court of the United States in and for the Western District of Oklahoma.

No. 511.

THIXTON, MILLETT & COMPANY, a Corporation, Complainant,
vs.

S. W. STONE, State Dispensary Agent; JOHN HAYES, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock, T. J. Brown and A. S. Peacock, Defendants.

Restraining Order.

This cause coming on to be heard on this the 23rd day of November, 1909, upon the complaint of the plaintiff, and the court, after being fully advised in the premises, is of the opinion that a temporary restraining order should issue.

It is therefore ordered that the defendants S. W. Stone, John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, F. F. Cain, S. W. Fenton, William Murdock, T. J. Brown, and A. S. Peacock, and each of them, and all persons acting by, through or under them, be and they are hereby re-trained from seizing or causing to be seized, either directly or indirectly, any intoxicating liquors shipped by the complainant, Thixton, Millett & Company, a corporation, from the State of Kentucky to consignees within the Western District of the State of Oklahoma, while in the possession of the common carrier and before the same have been delivered to such consignees.

It is further ordered that the defendants, and each of them be served with a notice of this order to be and appear before the Court

at the Federal Court Room at the County Court House of
421 Comanche County, Oklahoma, at Lawton, Oklahoma, on
November 30, 1909, at two o'clock P. M. of said day, and to then and there show cause why a temporary injunction should not be issued, as prayed for in this complainant's bill.

It is further ordered that the restraining order herein granted shall be in force and effect until the time fixed for the hearing of said application for a temporary injunction, and until a further order of the court.

It is further ordered that a copy of this order, certified under the hand of the clerk and seal of the court, be served on the defendants

each of them by the Marshal of the Western District of Oklahoma.

This order to become effective upon the complainant, Thixton, Millett & Company, a corporation, executing and filing a good and sufficient bond in the sum of One Thousand (\$1,000.00) Dollars be approved by the Clerk of this Court, indemnifying the defendants restrained herein against any damage they may sustain thereby in the event it shall be determined that this restraining order should have been issued.

JOHN H. COTTERAL, *Judge.*

Endorsed: No. 511. In the U. S. Circuit Court. Thixton, Millett & Co., Plaintiff vs. S. W. Stone, et al. Defendants. Restraining order. Filed Nov. 23, 1909. Harry L. Finley, Clerk.

In the Circuit Court of the United States Within and for the Western District of Oklahoma.

No. 511. In Equity.

THIXTON, MILLETT & COMPANY, a Corporation, Complainant,
vs.
S. W. STONE et al., Defendants.

Appearance of Fred S. Caldwell as Solicitor for Respondents.

Harry L. Finley, Clerk of the Honorable Circuit Court of the United States within and for the Eastern District of Oklahoma: You will please enter my appearance as solicitor and attorney of record for all of the respondents in the above named cause.

FRED S. CALDWELL,
*Counsel to the Governor of the
State of Oklahoma.*

Endorsed: No. 511. U. S. Circuit Court Western Dist. Okla. Thixton, Millett & Co., vs. S. W. Stone, et al., Appearance Filed Jan. 31, 1910. Harry L. Finley, Clerk.

423 UNITED STATES OF AMERICA,
State of Oklahoma, Western District, ss:

In the Circuit Court of the United States Within and for said District.

No. 511.

THIXTON, MILLETT & COMPANY, a Corporation, Complainant,
vs.

S. W. STONE, State Dispensary Agent, JOHN HAYES, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock, T. J. Brown and A. S. Peacock, Defendants.

Demurrer for Lack of Jurisdiction and Equity.

These respondents, S. W. Stone, John Hayes, G. F. Caffey, W. J. Garrett, John Queenan, F. F. Cain, S. W. Fenton, William Murdock, T. J. Brown and A. S. Peacock, by protestation, not confessing or acknowledging all, or any of the matters or things in the said bill of complaint contained to be true, in such manner as the same are therein set forth and alleged, demur to the said bill; and for cause of demurrer show:

I.

That it appears by the complainant's own showing by the said bill that they are not entitled to the relief prayed for by said bill against these respondents, or any of them.

II.

That it appears from said complainants' bill of complaint, that
424 by decree of injunction of this Honorable Court, are carried on and conducted in direct violation of the penal laws of the United States of America, to-wit, in violation of Sections 238, 239 and 240 of an Act of Congress of March 4th, 1909. (35 Stat. L. 1136-7).

III.

That it appears from complainants' said bill of complaint that this Court has no jurisdiction to hear and determine this action, and that the relief prayed for is sought in direct violation of the Eleventh Amendment to the Constitution of the United States, and of Section 720, of the Revised Statutes of the United States.

IV.

That complain-ts' said bill of complaint is wholly without equity.

Wherefore, and for divers other good causes of demurrer in said bill, these respondents demur thereto, and they and each of them

pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to complainant's said bill, and they and each of them humbly pray to be hence dismissed with their reasonable costs in their -half sustained.

FRED S. CALDWELL,
Solicitor for Respondents.

25

Verification.

STATE OF OKLAHOMA,
County of Logan, ss:

Fred S. Caldwell, being first duly sworn, on oath, says: That he is the solicitor for the respondents to the foregoing demurrer in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point of law; and on behalf of said respondents, and each of them, says that the same is not interposed for delay.

FRED S. CALDWELL.

Subscribed and sworn to before me this 3rd day of January, 1910.

[SEAL.]

HARRY L. FINLEY,
Clerk U. S. Circuit Court.

Endorsed: No. 511. U. S. Circuit Court, Western Dist. Okla. Thixton, Millett & Co. vs. S. W. Stone, et al. Demurrer. Filed Jan. 3, 1910. Harry L. Finley, Clerk.

426 In the Circuit Court of the United States for the Western District of Oklahoma, January Term, 1910, Saturday, January 8th, 1910.

No. 511.

THIXTON, MILLETT & Co., Complainant,
vs.
S. W. STONE et al., Defendants.

Now on this January 8th, 1910, this cause comes on for hearing upon the application of complainant for a temporary injunction, and upon the demurrer of the defendants to complainant's bill of complaint.

The complainant appears by its attorneys Giddings and Giddings, and the defendants appear by Fred S. Caldwell, their attorney. Thereupon argument of counsel is heard, and the said application of complainant for a temporary injunction, and the demurrer of the defendants are submitted to the court.

Journal, 3—Page 88.

427 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 511.

THIXTON, MILLETT & COMPANY, a Corporation, Complainant,
vs.
S. W. STONE et al., Defendants.

Order.

Now on this February 19th, 1910, the demurrer filed herein to Complainant's bill having been heretofore argued and submitted to the court, on to-wit, January 8th, 1910, the complainant appearing at that time by its attorneys, Giddings & Giddings, and the defendants by their attorney Fred S. Caldwell, and the court being now fully advised it is,

Ordered, that the said demurrer be and the same is hereby overruled.

It is further ordered that defendants have until the March, 1910, rule day in which to file answer herein.

To which order and ruling of the court in overruling the said demurrer, exceptions are allowed the defendants and each of them.

JOHN H. COTTERAL, *Judge.*

Endorsed: No. 511. Thixton, Millett & Company vs. S. W. Stone, et al. Order overruling demurrer. Filed February 19, 1910. Harry L. Finley, Clerk, By M. V. Haws, Deputy.

428 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 511. In Equity.

THIXTON, MILLETT & COMPANY, a Corporation, Complainant,
vs.
S. W. STONE et al., Defendants.

This cause came on for hearing before the Court, this 19th day of February, 1910, upon the bill of complainant, pursuant to former order, in support of its application for a temporary injunction. The defendant offered no testimony in contradiction thereof. Upon consideration of the bill and the arguments submitted, the Court finds that a temporary injunction should be granted against the said defendants. It is therefore

Ordered that said defendants and each of them, and all persons acting by, through or under them, be and they are hereby enjoined until the further order of the Court or a judge thereof, from seizing or causing to be seized any intoxicating liquors shipped by the complainant in the course of interstate commerce from the State of

entucky to consignees within the Western District of the State of Oklahoma, while in the possession of the common carrier and before delivery thereof to such consignees. This order to be in force and effect when the complainant shall give a good and sufficient bond, the sum of \$5,000.00, to be approved by the Clerk of this Court, conditioned to pay the defendants all damages they may sustain if it shall be determined that this injunction should not have been granted. It is further

Ordered that in the meantime and for a period of fifteen days from this date, the restraining order heretofore issued herein shall stand and remain in force and effect.

JOHN H. COTTERAL, *Judge.*

Endorsed: No. 511. Thixton, Millett & Co. vs. S. W. Stone et al. Temporary Injunction Order of Feb. 19th. 1910. Filed M'ch 26, 1910. Harry L. Finley, Clerk.

9 UNITED STATES OF AMERICA,

State of Oklahoma, Western District, ss:

the Circuit Court of the United States in and for said State and District.

No. 511. In Equity.

THIXTON, MILLETT & COMPANY, a Corporation, Complainant.

vs.

W. STONE, State Dispensary Agent; JOHN HAYES, Assistant Counsel to the Governor; G. F. Caffey, Constable; W. J. Garrett, Constable; John Queenan, Constable; F. F. Cain, S. W. Fenton, William Murdock, T. J. Brown, and A. S. Peacock, Respondents.

Joint Answer of S. W. Stone, G. F. Caffey, W. J. Garrett, John Queenan, F. F. Cain, S. W. Fenton, William Murdock, T. J. Brown, and A. S. Peacock.

These respondents, S. W. Stone, G. F. Caffey, W. J. Garrett, John Queenan, F. F. Cain, S. W. Fenton, William Murdock, T. J. Brown and A. S. Peacock, now and at all times hereinafter, saving to themselves all and all manner of benefit or exception or otherwise that now or may be had or taken, to the many errors, uncertainties and imperfections, in the said bill contained, or so much thereof as these respondents are advised is material or necessary for them to make answer to, answering say:

I.

These respondents admit the citizenship of complainants and the citizenship of these respondents, in manner and form as alleged in said bill of complaint; and these respondents further admit that complainants are dealers in intoxicating liquors, and have their office and place of business in the City of

Louisville, in the State of Kentucky, and that their method of business carried on and conducted with citizens and residents of the State of Oklahoma, is in part, carried on and conducted in manner and form as stated and alleged in paragraph 1, of their said bill of complaint.

But these respondents say that by far the greater portion of such intoxicating liquors so shipped into the State of Oklahoma by complainants, are knowingly shipped into said State, and there delivered or caused to be delivered by complainant to sundry and diverse persons for the sole and express purpose of being used by said persons in violation of the laws of the State of Oklahoma, to-wit: In violation of the Constitution of said State, and in violation of Article III, Chapter 61, of the 1909 Compiled Laws of the State of Oklahoma, and also in violation of an Act of Congress approved on the 16th day of June, 1906, (Ch. 3335, U. S. Stat., 1905-06, Part 1, p. 267), and entitled:

"An Act to Enable the People of Oklahoma and of the Indian Territory to form a Constitution and State Government, and be admitted into the Union on an equal footing with the original States; and to Enable the People of New Mexico and Arizona to form a Constitution and State Government, and be admitted into the Union on an equal footing with the original States."

And these respondents further say that as appears from "Record Ten" on the office of the United States Internal Revenue Collector, for the District of Kansas, at Leavenworth, in the State of Kansas, of which said District the said State of Oklahoma is a part, the persons within the State of Oklahoma to whom the great bulk of

intoxicating liquors shipped into said State by complainant
 431 are by complainants delivered or caused to be delivered are persons who have paid the special tax required of liquor dealers by the United States and of all this complainants have or could easily obtain actual knowledge. And these respondents further say that the great bulk of complainants' said intoxicating liquors so shipped into the State of Oklahoma consists of intoxicating liquors shipped into said State to be there delivered and placed in the possession of said persons who have paid said special tax required by the United States of liquor dealers, and whose sole and only purpose it is to use and dispose of said intoxicating liquors in violation of the laws of said State of Oklahoma, to-wit: Article III, Chapter 61, of the 1909 Compiled Laws of the State of Oklahoma, and the prohibition Article to the Constitution of the State of Oklahoma. And these respondents further say that because of the quantities contained in the shipments and the frequency with which such shipments are made to the same per-on or persons, and from other facts and circumstances such as payment by said persons to whom complainants deliver or cause to be delivered said intoxicating liquors, of the special tax required of liquor dealers, by the United States, complainants well know that such intoxicating liquors so brought into the State of Oklahoma by themselves and there by them delivered or caused to be delivered are intended by the persons to whom the same are delivered or caused to be delivered, to be kept, used or

disposed of, in violation of said laws of said State of Oklahoma, and therefore constitute and become public nuisances within said State of Oklahoma, immediately upon being by complainants placed or caused to be placed in the possession of such persons.

432

II.

These respondents further admit that respondent, S. W. Stone, is the duly appointed, qualified and acting State Agency Superintendent, under and pursuant to the terms and provisions of Chapter 61, of the 1909 Compiled Laws of the State of Oklahoma; that the respondents, G. F. Caffey, W. J. Garrett, John Queenan, are duly constituted, qualified and acting constables of Oklahoma City Township in the County of Oklahoma, State of Oklahoma, and that respondent A. S. Peacock is the duly appointed, qualified and acting Deputy Sheriff of Oklahoma County, State of Oklahoma; and that the respondents, F. F. Cain, S. W. Fenton, William Murdock, and A. S. Peacock, are assistants employees and representatives of the respondent, S. W. Stone, as such State Agency Superintendent of the State of Oklahoma; but these respondents and each of them expressly and specifically deny that they have ever committed any wrong or trespass against complainants, their property or property rights, in manner and form as charged and alleged in paragraph II, of their said bill of complaint, and expressly deny that they are contemplating or threatening to commit, cause to be committed or in any manner urge the commission of any such wrong or trespass and expressly aver the facts with reference to all matters referred to in said paragraph II, of said bill of complaint, to be as follows:

Sections 4180, 4184, 4185 and 4187, of the 1909 Compiled Laws of the State of Oklahoma, are in words and figures as follows:

"SEC. 4180. What unlawful—Penalty. It shall be unlawful for any person, individual, or corporate, to manufacture, sell, barter, give away or otherwise furnish, except as in this act provided any spirituous, vinous, fermented or malt liquors, or any imitation thereof, or substitute therefor; or to manufacture, sell, barter, give away, or otherwise furnish any liquors or compounds of any kind or description whatsoever, whether medicated or not, which contain as much as one-half or one per centum of alcohol, measured by volume, and which is capable of being used as a beverage, except preparations compounded by any licensed pharmacist, the sale of which would not subject him to the payment of the special tax required by the laws of the United States; or to ship or in any way convey such liquor from one place within this State to another place therein except the conveyance of a lawful purchase as herein authorized; or to solicit the purchase or sale of any such liquors, either in person or by sign, circular, letter, card, price list, advertisement or otherwise, or to distribute, publish or display any advertisement, sign or notice where any such liquor may be manufactured, bartered, sold, given away, or otherwise furnished, or to have the possession of any such liquors with the intention of violating any of the provisions of this act. A violation of any provisions of this section shall be a misdemeanor, and shall be punished by a fine

433

of not less than fifty dollars, nor more than five hundred dollars, and by imprisonment for not less than thirty days, nor more than six months;

"Provided, however, that the provisions of this act shall not apply to the manufacture and sale of unfermented cider and wine made from apples, grapes, berries or other fruit grown in this State, and to the use of wine for sacramental purposes in religious bodies."

"SECTION 4184. Warrant Issued by Whom—How Served—Seizure of Property. If it shall be made to appear to any judge of the district or county court or justice of peace that there is probable cause to believe that liquors are being manufactured, sold, bartered, given away, or otherwise furnished, or are being kept for the purpose of selling, bartering, giving away, or otherwise furnishing liquors in violation of this Act, such judge or magistrate shall issue a warrant directed to any officer of the county whom the complainant may designate, having the power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant, and to seize all such liquors there found, together with the vessels in which they are contained, and all implements, furniture, and fixtures, used or kept for such illegal manufacturing, selling, bartering, giving away or otherwise furnishing of such liquors, and safely keep the same, and to make return thereunder, within three days of said warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession the same was found, if any, and if no person be found in the possession of said property his return shall so state. A copy of said warrant shall be served upon the person or persons found in the possession of any such liquors, furniture or fixtures so seized, and if no person be found in possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same are found."

"SEC. 4185. Hearing. Upon the return of such warrant as provided in the next preceding section, the magistrate or judge shall fix a time, not less than ten days nor more than thirty days thereafter, for hearing of said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof was used in violation of any of the provisions of this Act. At such

hearing, any party claiming an interest in any "such property,"
434 erty, may appear and be heard, and if upon such hearing

it shall appear that any property so seized was knowingly used, or permitted to be used, in violation of any provision of this Act, the same shall be adjudged forfeited by the State, and shall be adjudged forfeited by the State, and shall be delivered to the custody of the superintendent to be disposed of under the provisions of this Act. If upon such hearing it shall appear that any property so seized was not kept or used for an unlawful purpose, or if any person shall show that he is the owner of any furniture fixture or other property seized under such warrant, and that the same, or any part thereof, were unlawfully used without his knowledge or consent, the same shall be returned to its lawful owner."

"SEC. 4187. Warrant Not to Issue Except on Oath.—No such

warrant shall issue but upon probable cause, supported by oath or affirmation describing as particularly as may be the place to be searched, or the person or thing to be seized."

That the method by which the State of Oklahoma enforces the foregoing statutory provisions and abates liquor nuisances found to exist within its borders, within the meaning of said statutes is as follows:

The district courts, county courts, and justice of peace courts, of said State, are vested with jurisdiction of all actions against any particular quantity of intoxicating liquor, for the purpose of determining whether or not said particular quantity of intoxicating liquor is an offending thing against said laws, and therefore constitutes and is a public nuisance, within the purview and meaning of said laws hereinabove set forth; that all such actions are prosecuted by the State of Oklahoma, directly, in its own name, against said particular quantity of intoxicating liquor as such offending thing; that all such actions are commenced by The State of Oklahoma, in its said courts in the following manner, to-wit:

Some person having knowledge of the facts appears before a judge of a district court or before a judge of a county court, which said courts are courts of record, or before a justice of the peace, which said justices of the peace courts are not courts of record, and such person so appearing before such judicial officer makes a complaint in writing, and supported by his oath or affirmation, which said complaint so sworn to describes as particularly as may be the place to be searched and the intoxicating liquor to be seized, and also recites facts, which, standing alone and undisputed, are sufficient to establish prima facie the existence of such intoxicating liquors as a liquor nuisance; that upon such sworn complaint, in writing, said judicial officer, to whom the same is presented, judicially determines whether or not there is probable cause for the issuance of a warrant, pursuant to the terms and provisions of said sections 4184 and 4185, supra, of said laws, and if said judicial officer thereupon judicially determines that such probable cause exists, he thereupon causes to be instituted, in the respective judicial tribunal over which he presides, an action by the State of Oklahoma, against such intoxicating liquor, so described in said complaint, and forthwith issues in said action, a search and seizure warrant, pursuant to the terms and provisions of said sections 4184 and 4185 supra, of said laws; and such search and seizure warrant is, by said judicial officer so issuing the same, directed to one of the executive officers of said judicial tribunal over which said judicial officer presides, to-wit: a constable, or sheriff, or a duly constituted deputy of either, and such warrant is by such judicial officer delivered to such executive officer of said judicial tribunal for service and execution; that said sheriff or constable, or said duly constituted deputy of either, to whom such search and seizure warrant is so directed and delivered, takes the same and proceeds therewith to the place described therein, and by authority thereof seizes and takes possession of all intoxicating liquor there found which is described in said warrant, and said officer so executing said warrant thereupon

serves a copy of the same upon the person or persons found in possession of such intoxicating liquor, and if no person be found in possession thereof said officer posts a copy of such warrant on the door of the building or room or compartment or place where the said intoxicating liquor is found; that thereafter, and within three days from the issuance of such warrant, said officer makes due return thereof to said judicial tribunal out of which the same issued, and in such return said officer shows all acts and things done by him thereunder, with a particular statement of all intoxicating liquors seized and of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said intoxicating liquors his return so states; that upon such return of such warrant, in manner and form as hereinabove stated, said judicial officer who issued said warrant fixes a time not less than ten days nor more than thirty days thereafter for a hearing upon said return, and at such hearing said judicial tribunal proceeds to hear and determine whether or not the intoxicating liquor so seized, or any part thereof, was a thing offending against said laws, and was therefore a liquor nuisance. At such hearing any party claiming an interest in any such intoxicating liquor may appear before said judicial tribunal and be heard, and if upon such hearing, it shall appear or shall be shown, that any such intoxicating liquor so seized, was at the time of such seizure a shipment made to a person within the State of Oklahoma, from a place outside of said State, and had not been delivered by the interstate carrier, under the contract of interstate shipment, to the consignee at the place of destination, then in that event, pursuant to a decision of the Supreme Court of Oklahoma, in the case of *State v. 18 casks of beer, et al.*, 437 104 Pac. 1093, said judicial tribunal forthwith orders and adjudged that such intoxicating liquors be returned to the person or persons so claiming it, on the ground that at the time it was seized it had not ceased to be interstate commerce within the meaning of subdivision 3, section 8, article 1, of the Constitution of the United States, and had not arrived within the State of Oklahoma, within the meaning of the act of Congress of August 8, 1890, (c. 728, 26 Stat. 313, U. S. Comp. St. 1901, p. 3177). Provided, however, that if it be shown and established at such hearing that said intoxicating liquor or any portion thereof was so shipped from a point outside the State of Oklahoma, to a place within said State; and that such act of shipment was performed in violation of section 3449, of the Revised Statutes of the United States, or in violation of any one or more of sections 238, 239 and 240, of the act of Congress of March 4, 1909, (35 Stat. L. 1136-7) or that said intoxicating liquor was adulterated or "misbranded" within the meaning of the act of Congress of June 30, 1906, ch. 3915, 34 Stat. L. 768, commonly known as the Pure Food and Drug Act, then as to all such liquor so shipped or "adulterated" or "misbranded" in violation of said acts of Congress, said judicial tribunals hold said commerce clause of the Constitution of the United States, *supra*, to be inapplicable, on the ground that such intoxicating liquor is not and, under such circumstances, could not be made a legitimate subject of

interstate commerce, and, therefore, as to all such liquor, said judicial tribunals proceed regardless of the fact that the same may have been in the possession of an interstate common carrier undelivered under a contract of interstate shipment at the time the seizure was made.

438 III.

As to paragraph III. of complainants' said bill of complaint, these respondents and each of them, specifically deny that they or any of them have ever interfered or that they or any of them have ever threatened or are threatening or in any manner intend to interfere, with complainants' said business, and said interstate shipments of intoxicating liquors, sent into the State of Oklahoma, except to such extent and in such manner as the same may be incidentally affected by the due and orderly procedure in said courts of the State of Oklahoma, of proceedings instituted therein and prosecuted by the State of Oklahoma pursuant to said Sections 4184, 4185, and 4187, of said 1909 Compiled Laws of the State of Oklahoma, in manner and form hereinabove set forth, and these respondents and each of them, expressly deny that they have ever in any manner, counseled, instructed or advised or that they intend in the future in any manner to counsel, instruct or advise, any person or persons whomsoever, to act in any manner touching or concerning complainants' said interstate shipments of intoxicating liquor into the State of Oklahoma, other than according to the due and orderly course and procedure under said laws of the State of Oklahoma, in manner and form hereinabove stated.

IV.

As to paragraph IV of complainants' said bill of complaint, the respondents say: That said paragraph IV is fully answered by paragraph II of this answer.

V.

As to paragraph VI of complainants' bill of complaint, these respondents say: That they deny each and every allegation and statement therein contained.

439 & 440 VI.

And these respondents deny all and all manner of unlawful combination and confederation wherewith they are charged in said bill, and without this there is no other material cause or thing in said complainants' bill of complaint contained material or necessary for this respondent to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied. is true, to the knowledge or belief of *this* respondents, all of which matters and things these respondents are ready and willing to aver, maintain, and prove, as this Honorable Court shall direct, and these respondents humbly pray to be hence

dismissed with their reasonable costs and charges in this behalf wrongfully sustained.

FRED S. CALDWELL,
Solicitor for Respondents

Endorsed: No. 511. In Equity. In the Circuit Court. Thixton Millett & Company, a corporation, Complainant, vs. S. W. Stone, State Dispensary Agent, John Hayes, Assistant Counsel to the Governor, G. F. Caffey, Constable, W. J. Garrett, constable, John Queenan, constable, F. F. Cain, S. W. Fenton, William Murdock, T. J. Brown and A. S. Peacock, Respondents. Joint Answer of S. W. Stone, G. F. Caffey, John Queenan, W. J. Garrett, F. F. Cain, S. W. Fenton, William Murdock, T. J. Brown and A. S. Peacock. Filed March 5, 1910. Harry L. Finley, Clerk, By M. V. Haws, Deputy.

441 UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

I, Harry L. Finley, Clerk of the Circuit Court of the United States for the Western District of Oklahoma, do hereby certify that the foregoing is a full, true and complete transcript of the pleadings, files and orders, purporting to be contained therein, in the cases pending in said Court, to-wit: number 276, wherein The Atchafalaya, Topeka and Santa Fe Railway Company is complainant and Fred S. Caldwell et al. are defendants; number 329, wherein Missouri, Kansas and Texas Railway Company is complainant and Robert Lozier et al. are defendants; number 484, wherein Joseph Fillmore is complainant and S. W. Stone et al. are defendants; number 485, wherein William Swartz et al. are complainants and Charles N. Haskell et al. are defendants; number 489, wherein The O. F. Haskell Company, a corporation, is complainant and Charles N. Haskell et al. are defendants; number 496, wherein J. T. S. Brown & Son, a corporation, is complainant and Charles N. Haskell et al. are defendants; number 511, wherein Thixton Millett & Company, a corporation, is complainant and S. W. Stone et al. are defendants. The originals of the same appear on file or of record in my office.

Witness my hand as Clerk and the seal of said Court, at Guthrie, in said District, this 28th day of March, 1910.

[The Seal of the Circuit Court of the United States, Western District of Oklahoma.]

HARRY L. FINLEY, Clerk

Endorsed on cover: Supreme Court of the United States, October term, 1909. No. 14, original. Ex parte: In the matter of the State of Oklahoma, petitioner. Return to rule to show cause. Filed April 4, 1910.

FILED.

FEB 23 1911

JAMES H. MCKENNEY,

CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910.

No. 9, Original.

THE STATE OF OKLAHOMA, ONE OF THE UNITED STATES OF AMERICA, BY CHARLES N. HASKELL, GOVERNOR AND SUPREME EXECUTIVE OFFICER THEREOF, Petitioner,

vs.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, AND RALPH E. CAMPBELL, THE DISTRICT JUDGE OF SAID DISTRICT, SITTING AS JUDGE OF SAID CIRCUIT COURT, Respondents.

No. 10, Original.

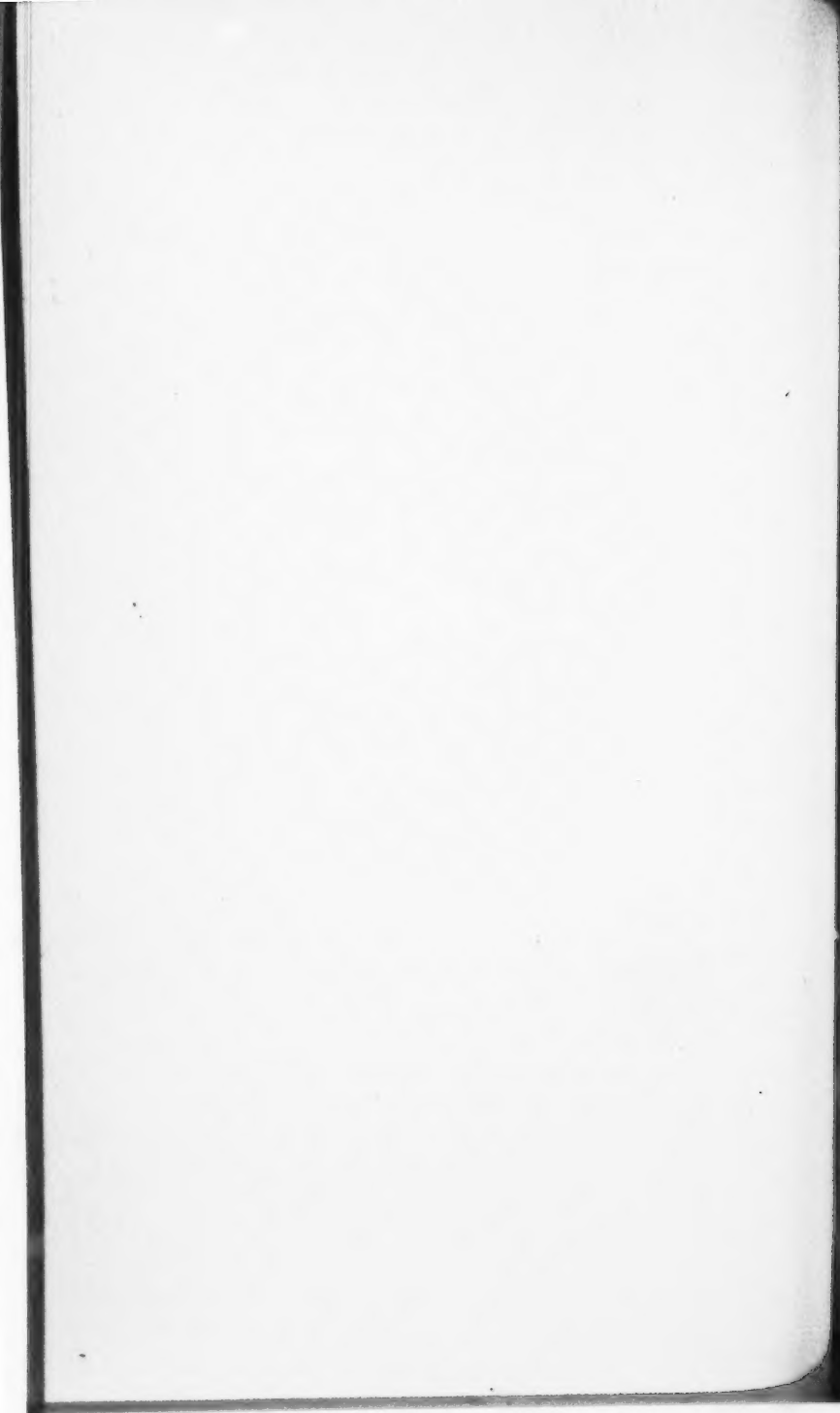
THE STATE OF OKLAHOMA, ONE OF THE UNITED STATES OF AMERICA, BY CHARLES N. HASKELL, GOVERNOR AND SUPREME EXECUTIVE OFFICER THEREOF, Petitioner,

vs.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA, AND JOHN H. COTTERAL, THE DISTRICT JUDGE OF SAID DISTRICT, SITTING AS JUDGE OF SAID CIRCUIT COURT, Respondents.

**BRIEF FOR RESPONDENTS IN OPPOSITION TO
THE ISSUANCE OF THE WRITS OF PROHI-
BITION.**

LAWRENCE MAXWELL,
JOSEPH S. GRAYDON,
Counsel.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 9, Original.

THE STATE OF OKLAHOMA, ONE OF THE UNITED STATES OF AMERICA, BY CHARLES N. HASKELL, GOVERNOR AND SUPREME EXECUTIVE OFFICER THEREOF, Petitioner,

vs.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, AND RALPH E. CAMPBELL, THE DISTRICT JUDGE OF SAID DISTRICT, SITTING AS JUDGE OF SAID CIRCUIT COURT, Respondents.

No. 10, Original.

THE STATE OF OKLAHOMA, ONE OF THE UNITED STATES OF AMERICA, BY CHARLES N. HASKELL, GOVERNOR AND SUPREME EXECUTIVE OFFICER THEREOF, Petitioner,

vs.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA, AND JOHN H. COTTERAL, THE DISTRICT JUDGE OF SAID DISTRICT, SITTING AS JUDGE OF SAID CIRCUIT COURT, Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE ISSUANCE OF THE WRITS OF PROHIBITION.

Statement.

These are petitions for writs of prohibition to stop respondents from enforcing restraining

orders and injunctions issued in nine suits pending in the Circuit Court of the United States for the Western District of Oklahoma (Original No. 10), and in seven suits pending in the Circuit Court of the United States for the Eastern District of Oklahoma (Original No. 9), and from interfering in any manner with any prosecuting attorney, sheriff, constable, policeman, marshal, or other officer of the State of Oklahoma in the performance of any act done or to be done in connection with the prosecution of similar suits which may be hereafter instituted in the courts of Oklahoma (Petition in No. 10, p. 37).

When the cases were before the court at last term the response in No. 10, original, had not been returned and therefore the facts involved in the cases pending in the Circuit Court for the Western District of Oklahoma were not called to the attention of the court, either in the brief or the argument, except in case No. 276, on the docket of the circuit court, entitled "The Atchison, Topeka & Santa Fe Railway Co., complainant, *vs.* Fred S. Caldwell, Robert C. Lozier, Charles C. Post, and Roy D. Hoffman, respondents," which is covered by the brief filed on behalf of The Atchison, Topeka & Santa Fe Railway Company.

We filed a brief as *amici curiae*, which referred to the proceedings had in the Circuit Court for the Eastern District, as set forth in the record in No. 9, and also discussed the legal questions involved.

We file this brief for the purpose of showing to the court the condition of the records in No. 10, original, in the six cases in the Circuit Court for the Western District of Oklahoma, not covered by the brief for the Atchison, Topeka & Santa Fe Railway Co., to wit, *The Missouri, Kansas and Texas Railway Co. vs. Robert E. Lozier et al.*, No. 329 (R., 40); *Joseph Filler vs. S. W. Stone et al.*, No. 484 (R., 66); *Wm. Swartz et al. vs. Charles N. Haskell et al.*, No. 488 (R., 99); *The O. F. Haley Co. vs. Charles N. Haskell et al.*, No. 489 (R., 153); *J. T. S. Brown and Sons vs. Charles N. Haskell et al.*, No. 496 (R., 211), and *Thixton, Millett & Co. vs. S. W. Stone et al.*, No. 511 (R., 231). We propose also to answer the contentions raised in petitioner's supplemental brief filed November 28, 1910, referring to several cases in No. 9, original.

REVIEW OF THE PROCEEDINGS IN THE CASES IN THE
CIRCUIT COURT FOR THE WESTERN DISTRICT OF
OKLAHOMA (ORIGINAL, No. 10).

II.

Missouri, Kansas and Texas Railway Co. vs. Robert E. Lozier *et al.*, No. 329, in the circuit court (R., 40), was a bill filed October 30, 1908, against the several defendants to enjoin seizures of liquor shipments out of plaintiff's possession, which were

in the regular course of interstate commerce, prior to delivery to consignees in the State of Oklahoma; and to enjoin forcible entry into railroad cars belonging to plaintiff and in use at the time in interstate commerce. There was no allegation in the bill that the defendants were State officers or that they were executing any process out of State courts. On the same day a temporary restraining order (R., 47) against threatened future seizures was issued enjoining defendants from making "seizure of any shipment of wines, whiskies, beers, and other intoxicating liquors originating *bona fide* outside of the State of Oklahoma and consigned to points within said State in the course of interstate commerce and before delivery of the same to the consignees thereto," etc. On December 7, 1907, the defendants, except defendant Caldwell, filed a joint and several answer (R., 48) in which they set up that the acts done and performed by them were done and performed under "legal process of some court or tribunal of competent jurisdiction of said State of Oklahoma," and they set forth certain of the provisions of the prohibitory law of Oklahoma governing the issuance of search and seizure warrants for liquor out of the Oklahoma courts. On the same day, Fred. S. Caldwell filed an answer (R., 53), and also a cross-complaint (R., 56). In the cross-complaint he asked for affirmative relief, to wit, an injunction against plaintiff from "receiving for shipment to and de-

livery at any point or place within the State of Oklahoma, and from transporting, or in any manner conveying from points outside to a point inside said State of Oklahoma, any intoxicating liquors of any kind * * * which contain as much as one-half of one per cent. of alcohol, measured by volume, and which is capable of being used as a beverage, * * * consigned to, or to the order of, any person within said State of Oklahoma who has paid the special tax required of liquor dealers by the United States * * * or which said liquors or compounds are intended by the person or persons receiving the same from the Missouri, Kansas & Texas Railway Co., at the point of destination within the said State of Oklahoma to be used, or in any manner dispensed in violation of any laws of said State, and to receive for shipment or transportation, or in any manner conveying such liquors or compounds to any point within the said State of Oklahoma in such quantities, or under such circumstances as renders it improbable that the same are intended for the individual consumption of the consignee," etc. On March 15, 1909, plaintiff filed a demurrer to the answer and cross-complaint of defendant Caldwell (R., 65).

These were all the proceedings in the case as shown by the record. None of the defendants ever moved to dissolve the restraining order issued on October 30, 1908 (R., 47), nor was any attempt

made to bring before the court the questions which arose on the answers and cross-complaint and the demurrer thereto. When the restraining order was issued there was nothing to suggest to the court that defendants were or claimed to be State officers acting under the provisions of a State statute. The restraining order did not interfere with any proceedings theretofore begun in a State court, but only with future seizures.

Joseph Filler *vs.* W. S. Stone *et al.*, No. 484, in the circuit court (R., 66), was a bill filed October 21, 1909, against the several defendants, some of them named as State officers, defendant Stone being sued as superintendent of the State agency of the State (par. 7, R., 68) to prevent the seizure, under State laws, of liquors shipped by plaintiff from St. Louis, Missouri, to *bona fide* consignees in the State of Oklahoma, on the ground that such seizures constituted an irreparable injury to the business of "complainant in carrying on interstate commerce under the protection of the United States Constitution." On October 21, 1909, the same day that the bill was filed, plaintiff filed a petition for an injunction and restraining order (R., 72). On the same day the court issued an order restraining the seizure of "any intoxicating liquors shipped by the plaintiff, Joseph Filler, from the State of Missouri to the consignees within the western district of the State of Oklahoma while in the possession of the common carrier and before

the same have been delivered to such consignees" (R., 73). Thereafter plaintiff, by leave of court, filed several amendments to the bill based on subsequent seizures and another restraining order was obtained against new parties brought in by the amended bills (R., 79). On November 9, 1909, a temporary injunction was issued on affidavits, which enjoined defendants "from seizing or causing to be seized, either directly or indirectly, any intoxicating liquors shipped by the plaintiff, Joseph Filler, from the State of Missouri to actual *bona fide* consignees within the western district of the State of Oklahoma while in possession of the common carrier and before the same have been delivered to such consignees. Provided, however, that this order shall not apply to any liquors shipped in violation of section 3449 of the Revised Statutes of the United States, or any other acts of Congress, or to any liquors which are adulterated or misbranded, within the meaning of the act of Congress of June 30, 1906, Ch. 3915, 34 Stat. L., 768, commonly known as the Pure Food and Drugs Act" (R., 91). On November 19, 1909, an application for an order citing some of the defendants for contempt was made by plaintiff (R., 92). On December 4, 1909, defendants filed a "demurrer for lack of jurisdiction and equity" (R., 97), in which they set up "that it appears from complainant's said bill of complaint that this court has no jurisdiction to hear and determine this action, and that

the relief prayed for is sought in direct violation of the eleventh amendment to the Constitution of the United States, and of section 720 of the Revised Statutes of the United States."

These were all the proceedings in the case. Neither the injunction nor the temporary restraining orders issued by the court stayed any process issued out of a State court. They were all directed against future seizures. While defendants were sued in the bill as State officers, and while they appeared in court by counsel on the hearing on the temporary injunction order (R., 91) on November 4, 1909, they did not claim immunity from suit on the ground that the suit was against the State in violation of the eleventh amendment until December 4, 1909, and it does not appear that they ever made any attempt to have the court pass on the question raised by their demurrer.

Wm. Swartz *et al.* vs. Charles N. Haskell *et al.*, No. 488, in the circuit court (R., 99), was a bill filed October 22, 1909, by a liquor house located in Texas to enjoin the several defendants named as State officers from enforcing the provisions of the State law against liquors shipped by plaintiff in the regular course of interstate commerce to consignees in Oklahoma prior to the delivery of the liquors to the consignees. The prayer of the bill is for an injunction against Haskell, Governor; Caldwell, counsel to the Governor; Hayes, assistant counsel to the Governor; Stone, State dispen-

sary agent, and others claiming to be "some kind of State officers." On the same day a restraining order was issued as to the defendants other than Haskell, Caldwell, and Stone (R., 107). Various affidavits were filed by both parties (R., 108-131), and on November 1, 1909, Fred. S. Caldwell entered appearance as attorney for defendants (R., 132). On November 4, 1909, both parties being present by counsel, plaintiff's motion for a temporary injunction was denied (R., 133), and on the following day plaintiff filed an amended bill of complaint repeating the allegations of the original bill (R., 133). On November 10, 1909, a temporary injunction was issued against the defendants other than Haskell, Caldwell, and Stone against the seizure of liquors consigned to *bona fide* consignees before delivery to such consignees, but excepting out of such order liquors which might be shipped in violation of the several statutes of the United States referred to in the previous case. The order recites that the defendants except thereto on the ground that "said order and decree is in violation of section 720, Revised Statutes of the United States, and in violation of the eleventh amendment to the Constitution of the United States (R., 142). On December 4, 1909, defendants filed a demurrer for lack of jurisdiction and equity (R., 143) based on the same grounds. After argument this demurrer was overruled on February 19, 1910 (R., 145). On March 15, 1910, de-

defendants filed their joint answer (R., 146). There is no basis for the contention that the injunction issued in this case was in violation of Sec. 720, R. S. It was directed only against future seizures and did not relate to any seizures theretofore made under warrants issued out of any State court.

The *O. F. Haley Co. vs. Charles N. Haskell et al.*, No. 489, in the circuit court (R., 153), was a similar bill filed by a Texas corporation against the defendants as State officers to prevent the enforcement of the Oklahoma statute against liquors in the regular course of interstate commerce. A restraining order was issued on the filing of the bill against the defendants other than Haskell, Caldwell, and Stone against future seizures (R., 160). Affidavits were filed by both parties (R., 164-190). An amended bill of complaint was filed on November 5, 1909 (R., 192), and a temporary injunction issued on November 10, 1909 (R., 200) to which defendants objected on the ground that the order was in violation of R. S., Sec. 720, and the eleventh amendment to the Constitution of the United States. Defendants filed a demurrer for lack of jurisdiction and equity on December 4, 1909 (R., 202), which was overruled on February 19, 1910 (R., 203). On March 5, 1910, defendants filed their joint and several answer (R., 204). These were all the proceedings in the case. The restraining order and injunction did not interfere

with any proceedings out of a State court contrary to Sec. 720, R. S. U. S.

J. T. S. Brown & Sons vs. Charles N. Haskell, as Governor of the State of Oklahoma *et al.*, was a similar bill by a corporation of Kentucky, filed November 6, 1909. It was against the several defendants named in their official capacities as State officers. A temporary injunction was issued on affidavits on November 7, 1909 (R., 227). On January 3, 1910, defendants filed their demurrer for lack of jurisdiction and equity, relying on the eleventh amendment and Sec. 720, R. S. On January 27, 1910, it was stipulated between counsel that the cause should be extended for further hearing on the demurrer (R., 230). There were no further proceedings in the case. It therefore does not appear that the court ever passed on the question raised by the demurrer, nor did defendants ask for a dissolution of the temporary injunction at the time they first raised the questions relied on here. The temporary injunction was not in violation of Sec. 720, but affected only future seizures.

Thixton Millett & Co. vs. S. W. Stone, State dispensary agent, *et al.*, No. 511, in the circuit court (R., 231), was a similar bill by a Kentucky corporation against defendants named as State officers. A restraining order was issued on November 23, 1909 (R., 238). It related only to future seizures. On January 3, 1910, defendants filed a demurrer for lack of jurisdiction and equity (R.,

240), which was submitted to the court and overruled on February 19, 1910 (R., 242), and on the same day a temporary injunction was issued against future seizures. On March 5, 1910, defendants filed their joint and several answer.

The brief filed on behalf of the Atchison, Topeka & Santa Fe Railway Co., which was plaintiff in case No. 276, in the circuit court (R., 11), contains a more extensive review of the issues raised in that case than we consider necessary to set forth here in regard to the other cases in the record. Counsel say, at page 18, "that no question of jurisdiction has ever been raised in the Circuit Court of the United States for the Western District of Oklahoma. A restraining order and temporary injunction have each been assented to by the parties to the suit. The jurisdiction of the court in such action has been invoked by the defendants themselves to grant a restraining order against the complainant. No demurrer, plea to the jurisdiction, or motion to dissolve the demurrer, restraining order, or temporary injunction has ever been presented." This statement is fully justified by the record of the case.

II.

THE CIRCUIT COURT HAS NOT EXCEEDED ITS
JURISDICTION.

In response to the order to show cause issued out of this court, Judge Cotteral, the district judge of the western district of Oklahoma, sitting as judge of the Circuit Court of the United States for the Western District of Oklahoma, says:

“If the defendants were acting in accordance with any law of the State which authorized them to seize commodities of interstate commerce before delivery thereof at destination in the State, such law must be void for conflict with the Constitution and furnishes no immunity from suit, within the meaning of the amendment. Or, if the State laws invoked by them are valid, but the defendants acted and proposed to act in excess of the authority thereby conferred upon them, they were not by virtue of the amendment entitled to avail themselves of the defense that they represented the State and for that reason were not amenable to suit. These principles were regarded as firmly settled by authority.

“The provisions of the State constitution upon the subject of intoxicating liquors do not in terms relate to interstate commerce, and the interpretation put thereon by the State Criminal Court of Appeals is that they have no such relation. *High vs. State*, 101 Pac., 115. *Hudson vs. State*, 101 Pac.,

275. The same court has held that the jurisdiction of the State by virtue of its prohibitory statutes does not apply to interstate shipments of liquors prior to delivery at destination in the State. *McCord vs. State*, 101 Pac., 280. And the Supreme Court of the State has decided that the statutes of the State providing for the seizure of liquors apply after such delivery. *State vs. Eighteen Casks of Beer*, 104 Pac., 1093. So that it appears that the defendants predicated their claim to exemption from suit upon valid laws not applicable to interstate commerce.

“The question made upon the jurisdiction of the court was regarded as one pertaining to the merits rather than to original jurisdiction, and as instituting the inquiry whether in the exercise of jurisdiction the defendants might be relieved of the suits on the ground that they represented the State. But it was believed that before the defendants could succeed with that defense, it was incumbent on them to justify their conduct under a valid law of the State and that this they could not do, if the liquors they were seeking to seize and confiscate were undelivered commodities of interstate commerce.

“The defendants’ objection to the jurisdiction of the circuit court seems to amount to this, that they might determine upon a course of continuing seizures of interstate shipments of liquors, and that, although it might be that the seizures would be destructive of rights secured by the Federal Constitution and no law of the State

would be infringed with respect to the liquors, and the seizures would result in irreparable loss to the parties in interest and oblige them to engage in a multiplicity of suits to protect their rights, if the defendants should be sued in the Federal court upon sufficient allegations for relief by injunction against such course, they could, by declaring in that court that they were acting upon the authority of State laws successfully challenge its jurisdiction, and thereby accomplish the transfer of the whole power of inquiry into the subject of the State courts whence the seizure would emanate from time to time. The view of the circuit court was that jurisdiction was shown to exist in that court to make the inquiry, and that the objection that jurisdiction was assumed in these cases and the orders made therein in contravention of the eleventh amendment was unsound and predicated on a misconception of its meaning.

“With respect to the objection founded on section 720 of the Revised Statutes of the United States, it appears that the orders by their terms do not stay proceedings or direct the restoration of property, but restrain seizures. It was the opinion of the circuit court that the statute does not limit the Federal judicial power so as to forbid injunctions against future proceedings.”

The State of Oklahoma was not made party in its own name in any case pending in the circuit court. In regarding the question made as to the

jurisdiction of the court as one pertaining to the merits rather than to original jurisdiction, respondent is supported by the decisions of this court on the subject. The jurisdiction of the court was invoked in all the cases on the ground of diversity of citizenship with proper allegations of jurisdictional amount.

Sculley vs. Bird, 209 U. S., 481, was a bill in equity seeking an injunction against the Dairy and Food Commissioner of the State of Michigan, whose duty it was to enforce the laws of the State against unlawful labeling or adulteration or impurity of foods sold in the State, and to prosecute violations of the Michigan statute to prevent acts done by him injuriously affecting the reputation and sale of products manufactured by plaintiff. The bill was dismissed in the circuit court on the ground that it was in fact a suit against the State of Michigan within the meaning of the Eleventh Amendment to the Constitution. This court reversed the judgment on the ground that the question whether a suit against an individual named as a State officer is in fact a suit against the State is properly the subject of a demurrer or plea and not of a motion to dismiss. At page 486 Mr. Justice McKenna quoted from the opinion of Chief Justice Marshall in *Osborn vs. Bank of United States*, 9 Wheat., 738, as follows:

“The State not being a party on the record and the court having jurisdiction over those who are parties on the record, the true question is not one of jurisdiction, but whether in the exercise of its jurisdiction the court ought to make a decree against the defendants; whether they are to be considered as having a real interest or as being only nominal parties. * * * But where the suit is against an individual by name and he desires to plead an exemption by reason of his representative character, he does not raise a question of jurisdiction in its proper sense.”

Illinois Central Railroad Co. *vs.* Adams, 180 U. S., 28, was a bill in equity filed by the railroad company against Adams, revenue agent, and the Railroad Commission of Mississippi to enjoin the railroad commission from certifying an assessment for taxes against the plaintiff road and to enjoin the revenue agent from bringing any suit for the recovery of such taxes. The circuit court dismissed the bill on the ground that the suit was one against the State of Mississippi and in violation of the Eleventh Amendment to the Constitution of the United States. The decree of the circuit court dismissing the bill for want of jurisdiction was reversed by this court. Mr. Justice Brown, delivering the opinion, said at page 37:

“The question whether this is a suit against the State within the Eleventh

Amendment to the Constitution, which provides that the judicial power of the United States shall not be construed to extend to suits against one of the United States by citizens of another State, is also one which we think belongs to the merits rather than to the jurisdiction. If it were a suit directly against the State by name, it would be so palpably in violation of that amendment that the court would probably be justified in dismissing it upon motion; but the suit is not against the State, but against Adams individually, and if the requisite diversity of citizenship exist, or if the case arise under the Constitution or laws of the United States, the question whether he is so identified with the State that he is exempt from prosecution, on account of the matters set up in the particular bill, is more properly the subject of demurrer or plea than of a motion to dismiss."

In all the cases in No. 10, original, the judge of the circuit court exercised jurisdiction only in cases in which he had jurisdiction over the parties prior to any jurisdiction taken by a State court, nor did he undertake to interfere with any proceedings or process issued out of a State court. He therefore had jurisdiction by injunction or other appropriate means to prevent the parties before him from seizing or otherwise interfering with property involved in the cases until the questions which he had to pass on had been decided.

In *Ex parte Young*, 209 U. S., 123, it was held, as indicated in the seventh syllabus, that:

“A Federal court may enjoin the attorney-general of a State, whose general duty is to enforce the State statutes, from proceeding to enforce, against persons affected, a State statute which violates the Federal Constitution, such proceeding being not prohibited by the provision of the Federal Constitution forbidding the maintenance of actions against a State.”

Syllabus 9 reads:

“That the attorney-general of a State must, to enforce a State statute, resort to mandamus, in which proceeding he ordinarily represents the State in its governmental capacity, does not prevent a Federal court from enjoining him from using it, where the statute violates the Federal Constitution, since, in such case, his act in attempting, in the name of the State, to enforce a void enactment, is merely illegal, because in conflict with the superior authority of the Federal Constitution, and he is stripped of his official character, and the prohibition against his proceeding does not, therefore, affect the State in its governmental capacity.”

Western Union Telegraph Company vs. Andrews, 216 U. S., 165, is to the same effect.

The question whether the suits filed in the circuit court were actually suits against the State

was one which could not be determined without an inquiry into the merits. In those cases in which issues were made up by the filing of answers or demurrers to the jurisdiction, plaintiffs contended that the State law was an unconstitutional interference with interstate commerce, and defendants apparently contended that the provision of the Constitution of the United States which confers on Congress the power to regulate interstate commerce had no application to the shipments of liquor involved. It is submitted that this court is not concerned with the merits of that question. It was a question raised in the circuit court and one which the court had to decide before it could be determined whether the suits were in fact suits against the State contrary to the eleventh amendment. If the State statute was unconstitutional in attempting to confer on the State courts jurisdiction over property in course of interstate commerce, or if the statute had no application to such commerce, and defendants were nevertheless attempting to enforce it against such commerce, defendants were not entitled to set up immunity from suit on the ground that they represented the State.

NO CASE FOR A WRIT OF PROHIBITION IS MADE BY THE BILL.

Prohibition will not issue where the lower court has jurisdiction or where there is another legal remedy by appeal. We refer to the cases cited in our brief filed last term (p. 4).

Under R. S., 688, this court is expressly authorized to issue writs of prohibition in admiralty cases. *Ex parte* Gordon, 104 U. S., 516; *In re* Morrison, 147 U. S., 36; *In re* Fassett, 142 U. S., 486. While it may be assumed that the court may issue the writ in cases other than admiralty cases under R. S., sec. 716, no case yet presented has been deemed to justify such auxiliary use of the writ and its use has been confined to admiralty, as provided in R. S., sec. 688. It has been refused in the following cases, which were not admiralty cases: *Ex parte* City Bank, 3 Howard, 372; *Ex parte* Gordon, 1 Black, 505; *Ex parte* Graham, 10 Wallace, 543; *Ex parte* Waples, 154 U. S., 579; *Ex parte* Joins, 191 U. S., 102. In *In re* Huguley Manufacturing Co., 184 U. S., 297, in which it was contended that the circuit court had no jurisdiction to maintain a bill in equity because the parties were not in fact citizens of different States, and where petitioner had a remedy by way of appeal, the writ was refused. Chief Justice Fuller saying "the case as presented is far from being one in which we should regard it

as a proper exercise of our jurisdiction to interfere with the orderly progress of the suit below by the issue of either of the writs applied for."

In re Hardy, decided February 20, 1911, and not yet reported, the court deprecated the attempt by disappointed suitors in cases pending in the lower courts, with ample rights of appeal, to bring the cases before this court by petitions for extraordinary writs.

REPLY TO PETITIONER'S SUPPLEMENTARY BRIEF.

Plaintiff apparently pins its faith to the case of the Missouri, Kansas and Texas Railway Co. *vs.* Robert B. Watson *et al.*, No. 1236, in the circuit court (p. 83 of the record in No. 9, original), in which plaintiff has filed a supplemental brief setting forth a part of the proceedings in that case. It appears from the quotations in plaintiff's brief that Judge Campbell, judge of the eastern district, by a temporary injunction order restrained defendants from taking any steps to confiscate plaintiff's liquors which they had seized and ordered defendants to return said liquors to plaintiff.

It also appeared that a stipulation was filed to the effect that defendants were constables of Porter township, Muskogee county, State of Oklahoma, and that the seizures were made under a search warrant issued by a justice of the peace of said county. Plaintiff contends that in issuing the

injunction the court exceeded its jurisdiction. An examination of the record in that case will indicate that the contention is not well founded. The suit (R., 83) was not against defendants as State officers and did not name them in any official capacity, but complained against them as individuals on the ground that they had unlawfully taken interstate shipments out of the possession of plaintiff as an interstate carrier prior to delivery to the consignees, and that they threatened to continue such unlawful interference with plaintiff's interstate business. The prayer was for an order that the liquor seized should be redelivered to plaintiff and for an injunction against future seizures. The stipulation appears at p. 94 of the record, and has attached to it a copy of the search warrant under which the defendants made the seizures. The temporary injunction is at p. 97, and shows that defendants took no exception to the order of the court requiring them to redeliver the seized liquors to plaintiff, but, on the contrary, that the defendants agreed to safely keep such liquors in their possession subject to the final order of the court.

It does not appear that the stipulation was filed prior to the issuance of the temporary injunction. They were both entered on December 22, 1909. Defendants reserved no exception to the issuance of the temporary injunction, on the ground that they were State officers or had made the seizures

under any order of the State court, and in so far as the record shows the temporary injunction was issued prior to the filing of the stipulation. It was not until January 6, 1910, that defendants undertook to claim immunity from suit, on the ground that they were State officers, by filing a demurrer for lack of jurisdiction and equity (R., 101), in which they set up "that the relief prayed for is sought in direct violation of the seventh and eleventh amendments to the Constitution of the United States and in direct violation of Sec. 720, R. S. of the United States." No effort was made to have the court pass on this contention and no motion asking for a dissolution of the temporary injunction on that ground was filed. On the contrary, the State of Oklahoma brings the case here asking for the extraordinary relief prayed without ever having presented the question fairly to the circuit court.

While it is true that the court in that case stayed proceedings out of the State court in preventing temporarily the confiscation of liquors which had been seized under a warrant issued out of the State court, it made no order directed against the State court itself, and the order which it did make was consented to by the defendants. Even if the action of the circuit court could be construed as a violation of Sec. 720, R. S., it is submitted that that is no ground for issuing a writ of prohibition. For a circuit court to enjoin pro-

ceedings in a State court may be an error to be remedied by appeal or otherwise, but it is not a wrongful assumption of jurisdiction.

In the brief filed for petitioner at last term, which covered all the cases in No. 9, original, the following statement is made:

“The matter was presented and argued in the Circuit Court of the United States for the Eastern District of Oklahoma, to Honorable Ralph E. Campbell, on the following stipulation: ‘That all seizures referred to in complainants’ bill and about which complainants are claiming, were made under and pursuant to search and seizure warrants issued out of the State courts of competent jurisdiction, under and pursuant to the provisions of sections 5 and 6, article III, of chapter 69, of the Session Laws of 1907-08, of the State of Oklahoma. (These are sections 4184 and 4185 of the 1909 Compiled Laws of Oklahoma.) And it is further stipulated and agreed that the relief which the complainants herein are seeking, is that the defendants herein be enjoined from executing such search and seizure warrants so issued by said State courts under and pursuant to sections 5 and 6, article III, of said chapter 69, of the Session Laws of 1907-08, of the State of Oklahoma (sections 4184 and 4185 of the 1909 Compiled Laws of Oklahoma), and prosecuting the same in all cases where the execution of such search and seizure warrants necessitates the taking and seizing of intoxicating liquors shipped into the State of

Oklahoma by the complainants herein through interstate commerce where such interstate shipments of intoxicating liquors are in the hands of the interstate carrier and prior to the delivery thereof by the interstate carrier, to the consignee at the point of destination in the State of Oklahoma, under the terms and provisions of the contract of interstate shipment.' ”

If petitioner means to state that any such stipulation was filed in any of the nine cases decided by Judge Campbell, the statement is not substantiated by the record, and it is difficult to perceive how the matter “was presented and argued * * * to Honorable Ralph E. Campbell,” on a stipulation which was not in the record in any of the cases. Only two other cases in the record contain any stipulation at all. The stipulation in the *Missouri, Kansas and Texas Railway Co. vs. Watson et al.*, 1236 (R., 94), has already been referred to. This is apparently not the stipulation quoted in the brief, which evidently refers to the stipulation in *Thixton, Millett and Co. vs. Stone*, No. 1225 (R., 32). If so, the stipulation quoted in the brief varies from the stipulation which appears in the record on a very material point, in that the stipulation copied in the brief states that “it is further stipulated and agreed that the relief which the complainants are herein seeking, is that the defendants herein be enjoined from executing such

search and seizure warrants so issued by said State courts," etc., whereas the stipulation in the record (R., 32) is: 'It is further stipulated and agreed that the relief which the complainant is herein asking is that the defendants herein be enjoined from executing such search warrants so to be issued by said State courts," etc.

The order which was issued in that case did not interfere with any pending proceedings in the State court or order the return of any liquors seized by State officers, and the stipulation evidently referred only to warrants to be issued in future; whereas the brief filed by counsel would indicate to the court that the stipulation referred to warrants already issued.

CONCLUSION.

While the petitions are framed on the assumption that the circuits courts entertained suits against State officers as such for the purpose of interfering with the execution of process by them previously issued out of the State court, and disregarded pleas of immunity from suit based on the eleventh amendment to the Constitution over defendants' objections, the fact is that no one of the sixteen cases in the two records before this court presents such a state of facts. The cases in which liquors already seized were ordered returned to plaintiffs, or their confiscation stayed, were cases

in which it had not been made to appear to the court at the time the orders were made, that the seizures had been made under process issued out of State courts. In the cases in which it did appear that defendants were acting as State officers and that the seizures were under process issued out of State courts, the circuit courts did not undertake to interfere with seizures already made, but merely restrained future seizures; taking jurisdiction for the purpose of determining the question whether defendants were immune from suit on the ground that their acts were attributable to the State, as being done in pursuance of a valid State statute.

In many of the cases the circuit courts were not asked to pass on the question whether jurisdiction was lacking because the suit was one against the State; on the contrary the expedient seems to have been adopted of suggesting that question on the record and then rushing the case into this court without awaiting a decision. In every case there was ample remedy by appeal to the Circuit Court of Appeals, or direct to this court after final judgment. It is respectfully submitted that the case is not one for the extraordinary remedy asked for.

LAWRENCE MAXWELL,

JOSEPH S. GRAYDON,

Counsel.

Index to Transcript of No. 9, Original.

No. 576.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY

vs.

FRED. CALDWELL ET AL.

	Page.
Bill	2
Temporary restraining order	13
Order of delivery	14

No. 1225.

THIXTON, MILLETT & Co.

vs.

S. W. STONE, State Dispensary Agent, et al.

Bill	17
Temporary injunction order	30
Stipulation	32
Demurrer	33
Supplemental bill	35
Order overruling respondents' demurrer and granting temporary injunctions against respondents in supple- mental bill	40

No. 1232.

DAN DANCIGER ET AL.

vs.

S. W. STONE, Superintendent of the State Agency, et al.

Bill	43
Objection to the issuance of a temporary injunction . . .	52
Demurrer	54
Temporary injunction order.....	59
Supplemental bill	61
Restraining order on supplemental bill.....	69

No. 1235.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY

vs.

HENRY E. RIDENHOUR and HOLLAND CLARKE.

Bill	70
Temporary injunction	79
Demurrer	81

No. 1236.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY

vs.

ROBERT B. WATSON ET AL.

Bill	83
Agreement	94
Search warrant	95
Temporary injunction	97
Demurrer	101

No. 1237.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY

vs.

W. F. BLAKEMORE ET AL.

.....	103
temporary injunction	116
demurrer	122

No. 1242.

THE O. F. HALEY CO.

vs.

S. W. STONE, State Dispensary Agent, et al.

.....	124
injunction order	134
demurrer	136
motion to issuance of a temporary injunction	138
overruling demurrer	140

No. 1266.

FEHRENBACH WINE & LIQUOR CO.

vs.

S. W. STONE, State Dispensary Agent, et al.

.....	141
temporary injunction	155
demurrer	157

No. 1267.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY

vs.

JOHN M. HAYES ET AL.

Bill	159
Temporary injunction	173
Demurrer	175

[10700]

18

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

Office Supreme Court U. S.
FILED

APR 7 1910

JAMES H. MCKENNEY,
Clerk.

No. 13, Original.

THE STATE OF OKLAHOMA, ONE OF THE UNITED STATES OF AMERICA, BY CHARLES N. HASKELL, GOVERNOR AND SUPREME EXECUTIVE OFFICER THEREOF, Petitioner,

vs.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, AND RALPH E. CAMPBELL, THE DISTRICT JUDGE OF SAID DISTRICT, SITTING AS JUDGE OF SAID CIRCUIT COURT, Respondents.

No. 14, Original.

THE STATE OF OKLAHOMA, ONE OF THE UNITED STATES OF AMERICA, BY CHARLES N. HASKELL, GOVERNOR AND SUPREME EXECUTIVE OFFICER THEREOF, Petitioner,

vs.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA, AND JOHN H. COTTERAL, THE DISTRICT JUDGE OF SAID DISTRICT, SITTING AS JUDGE OF SAID CIRCUIT COURT, Respondents,

BRIEF OF COUNSEL FOR THE PLAINTIFFS IN THE CIRCUIT COURTS, AS AMICI CURIAE, IN OPPOSITION TO THE ISSUANCE OF THE WRITS OF PROHIBITION.

LAWRENCE MAXWELL,
JOSEPH S. GRAYDON,
E. G. McADAMS,

Amici Curiae.

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

1897

1897

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 13, Original.

THE STATE OF OKLAHOMA, ONE OF THE UNITED STATES OF AMERICA, BY CHARLES N. HASKELL, GOVERNOR AND SUPREME EXECUTIVE OFFICER THEREOF, Petitioner,

vs.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, AND RALPH E. CAMPBELL, THE DISTRICT JUDGE OF SAID DISTRICT, SITTING AS JUDGE OF SAID CIRCUIT COURT, Respondents.

No. 14, Original.

THE STATE OF OKLAHOMA, ONE OF THE UNITED STATES OF AMERICA, BY CHARLES N. HASKELL, GOVERNOR AND SUPREME EXECUTIVE OFFICER THEREOF, Petitioner,

vs.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA, AND JOHN H. COTTERAL, THE DISTRICT JUDGE OF SAID DISTRICT, SITTING AS JUDGE OF SAID CIRCUIT COURT, Respondents.

BRIEF OF COUNSEL FOR THE PLAINTIFFS IN THE CIRCUIT COURTS, AS AMICI CURIÆ, IN OPPOSITION TO THE ISSUANCE OF THE WRITS OF PROHIBITION.

Counsel who file this brief as *amici curiæ* by leave of court represent all the plaintiffs in the circuit courts except the railroad companies. The denial by the court of our motion

to be heard in oral argument deprived us of the opportunity to point out the inaccuracies and omissions in the statements of counsel for the petitioner as to the facts contained in the record; nor does the brief filed by the petitioner remedy these defects by giving any adequate statement of the issues involved. Only the record in case No. 13 is printed and available at the present time, and we confine our attention to that record, understanding that the leave given allows us to submit a further brief in No. 14 if it appears necessary when the record is printed.

Statement of the Case.

The petition for the writ recites (p. 30) that the court against which prohibition is asked has, in "violation of the Eleventh Amendment to the Constitution of the United States and contrary to and in direct violation of section 720 of the Revised Statutes of the United States, assumed jurisdiction in certain suits in equity brought and now pending in said Circuit Court of the United States for the Eastern District of Oklahoma." The numbers and names of the parties in nine suits are stated, and it is alleged that the relief sought in each of said suits is the staying of proceedings in the courts of Oklahoma, "and to enjoin this petitioner, the State of Oklahoma, from prosecuting any action in its said courts" under certain statutes of the State. The petition prays the issuance of a writ directed to said court and the judge thereof—

"prohibiting them, and each of them, from in any manner, either directly or indirectly, enforcing or attempting to enforce in any manner or to any degree whatsoever, against petitioner's said public officers, and particularly, against petitioner's said State agency superintendent, his agents, representatives, and employees; petitioner's said counsel to the Governor, his assistants, agents, representatives, and employees; petitioner's said county attorneys throughout said eastern district of Oklahoma, their assistants,

representatives, and employees; petitioner's said county sheriffs throughout said eastern district of Oklahoma, their under sheriffs, deputy sheriffs, assistants, representatives, and employees; petitioner's said constables throughout said eastern district of Oklahoma, their deputies, assistants, and employees; and, against petitioner's peace officers throughout said eastern district of Oklahoma, who are police officers of petitioner's several municipalities, being and situate in said eastern district of Oklahoma, said pretended re-training orders, temporary injunctions and injunctions so issued and now pending in said equity suits numbered 576, 1225, 1232, 1235, 1236, 1237, 1242, 1266, and 1267, respectively; and prohibiting said respondents, the Circuit Court of the United States for the Western District of Oklahoma, and Ralph E. Campbell, district judge of said district, sitting as judge of said Circuit Court, from in any manner whatsoever staying or interfering with the prosecution and conduct of any proceeding or proceedings in any court or courts of the State of Oklahoma, which said proceeding or proceedings are instituted and prosecuted by petitioner, the State of Oklahoma, in its said courts pursuant to the terms and provisions of said sections 4184 and 4185 of its 1909 Comp. Laws, by restraining, enjoining, or in any manner whatsoever interfering with any prosecuting attorney, sheriff, constable, policeman, marshal, or other officer, representative or employee of the State of Oklahoma, in the performance of any act done or to be done in connection with the prosecution of such proceeding or proceedings." (Petition, p. 36.)

In argument and in the petitioner's brief it was represented to the court that the cases in which the injunctions were issued by the Circuit Court involved the same or similar questions of law and fact, and that in this court the Eleventh Amendment to the Constitution and section 720, R. S., are involved, as to all the cases. This contention is at variance with the record. As the propriety of issuing a writ of prohibition necessarily depends on the questions presented to the Circuit Court, we have taken pains, after stating

a few general principles of law, to set forth more in detail than has yet been done the real issues in the court below.

The Writ Will Not Issue Unless it Clearly Appears that the Inferior Court is About to Exceed its Jurisdiction.

In re Fassett, 142 U. S., 479, 486, the court said:

"As the district court in the present case has jurisdiction in the premises, we will not prohibit it from proceeding in the exercise of such jurisdiction. A writ of prohibition is not intended to take the place of exceptions to the libel for insufficiency, and will issue only in case of a want of jurisdiction either of the parties or the subject-matter of the proceeding."

This rule is approved and followed in *Re Engles*, 146 U. S., 357. *Re Morrison*, 147 U. S., 14; *Re Rice*, 155 U. S. 396; *Re New York and Porto Rico Steamship Co.*, 155 U. S. 523, are to the same effect.

In *Smith vs. Whitney*, 116 U. S., 167, 176, it was said:

"The object of a writ of prohibition is to prevent a court of peculiar, limited, or inferior jurisdiction from assuming jurisdiction of a matter beyond its legal cognizance. It can only be issued to restrain the exercise of judicial functions. * * * A writ of prohibition is never to be issued unless it clearly appears that the inferior court is about to exceed its jurisdiction."

Want of Jurisdiction Must Not Appear from Facts Dehors the Record.

In *Ex parte Easton*, 95 U. S., 68, 77, the court said:

"Application for the writ of prohibition is properly made in such a case, upon the ground that the district court has transcended its jurisdiction in entertaining the described proceedings; and whether it

has or not must not depend upon facts stated *dehors* the record, but upon those stated in the record upon which the district court is called to act, and by which alone it can regulate its judgment. Mere matters of defense, whether going to oust the jurisdiction of the court or to establish the want of merit in the libellants' case, cannot be admitted under such a petition here to displace the right of the district court to entertain suits, the rule being that every such matter should be propounded by suitable pleadings as a defense for the consideration of the court, and to be supported by competent proofs, provided the case is one within the jurisdiction of the district court. *Ex parte Christy*, 3 How., 292."

See also *Re Cooper*, 143 U. S., 472; *Re Fassett*, 142 U. S., 479, 484, and *Re The Huguley Manufacturing Co., etc.*, 184 U. S., 297, in which the Chief Justice of the United States, delivering the opinion of the court, said:

"It is firmly established that where it appears that a court, whose action is sought to be prohibited, has clearly no jurisdiction of the cause originally, a party who has objected to the jurisdiction at the outset and has no other remedy, is entitled to a writ of prohibition as a matter of right. But where there is another legal remedy by appeal or otherwise, or where the question of the jurisdiction of the court is doubtful, or depends on facts which are not made matter of record, the granting or refusal of the writ of discretionary. In *Re Rice*, 155 U. S., 396. And that the writ of mandamus cannot be used to perform the office of an appeal or writ of error, and is only granted as a general rule where there is no other adequate remedy. In *Re Atlantic City Railroad Company*, 164 U. S., 633."

Taylor, "Jurisdiction and Procedure of the Supreme Court of the United States," sections 334, 335, cites these cases.

The grounds on which it is contended that the Circuit Court had no jurisdiction in the cases before it are: (1) The suits were against the State of Oklahoma, contrary to the

Eleventh Amendment of the Constitution; (2) the injunctions stayed proceedings in the State court contrary to section 720 of the Revised Statutes of the United States.

Case No. 576, Missouri, Kansas & Texas Ry. Co. *vs.* Fred Caldwell *et al.* (R., 2), in the Circuit Court for the Eastern District of Oklahoma, was a bill in equity by a corporation organized and existing under the laws of Kansas, and having its residence therein, against certain named defendants, citizens of Oklahoma. After alleging facts to show an interest in the subject-matter in excess of the jurisdictional amount, the bill alleges certain interferences, trespasses, and seizures to have been committed against liquors in the custody of plaintiff in the course of interstate transportation before delivery to the consignee. The amounts and kinds of liquor and names of the consignees are specified, and it is alleged that such unlawful seizures will continue as to future shipments, to the irreparable damage of plaintiff in the transaction of its interstate business, for which it has no adequate remedy at law. The relief asked is an injunction against further seizures, and an order requiring the return by certain of the defendants of the liquors already seized. The bill is verified (R., 11).

On September 9, 1908, the same day that the bill was filed, a temporary restraining order was issued (R., 13), and on September 16, 1908, both parties being present in court, an order was entered by consent continuing the temporary restraining order in force, and ordering defendants to redeliver to the plaintiff the liquors seized, with a provision in the order that plaintiff should redeliver the liquors back to defendants if on final hearing it should appear that the original seizures were unlawful (R., 14). These were all the proceedings in the case.

Nowhere does it appear in the record that Fred S. Caldwell, defendant, was "Fred Caldwell, counsel to the Governor, * * * clothed with power and authority and charged with the performance of certain public duties" (Petition for Writ, 33) under the laws of Oklahoma, or that

he was charged with any duties to enforce the laws of Oklahoma. It does not appear that the other defendants or any of them were acting as "petitioner's sheriffs, deputies, or under sheriffs, or constables, or peace officers" in making these seizures. All that the bill alleges is that defendants, in making the seizures, were "claiming to act under the authority of an act of the Legislature of the State of Oklahoma entitled 'An act to establish a State agency, etc.' " (R., 4), and that the seizures were made under a pretended search warrant (R., 4). All that the circuit judge had before him was a verified bill alleging that A, B, and C had seized liquors out of plaintiff's possession, claiming to act under an act of the Legislature on a pretended warrant. There was nothing to show that the liquors which were ordered returned to plaintiff were in possession of any State officer, or that they had been taken by virtue of any valid process, or that any State court had proceeded against them, or had attempted to assume jurisdiction over them. The circuit judge treated it as a clear case of trespass, as he had a right to do on the record. In order to bring the case within the Eleventh Amendment and section 720, R. S., matter *dehors* the record is sought to be injected into it by statements in the petition for the writ. It is clear that case No. 576 raised none of the important questions argued in this court.

Case No. 1235, *Missouri, Kansas & Texas Ry. Co. vs. Henry Ridenhour and H. Clarke* (R., 70), was a bill similar in all respects to that in No. 576, except that it does not allege that defendants even pretended to act under a search warrant in making the unlawful seizures. There is no allegation that defendants are State officers, or that they "are clothed with any duty in regard to the enforcement of the laws of the State" (to use the language of the court in *Ex parte Young*, 209 U. S., 123); there is no suggestion that the goods were seized or are held by defendants as State officers, or under any proceedings begun or contemplated in a State court. A temporary injunction was issued, "all parties being present and the court having heard counsel" (R., 79), and,

as in No. 576, the liquors were ordered returned to plaintiff. Some two weeks later defendants filed a "demurrer for lack of jurisdiction and equity" (R., 81), in which they allege as a ground—

"That it appears from the complainant's said bill of complaint that this court has no jurisdiction to hear and determine this action, and that the relief prayed for is sought in direct violation of the Seventh and Eleventh amendments to the Constitution of the United States, and in direct violation of section 720 of the Revised Statutes of the United States."

No ruling on this demurrer appears in the record.

No. 1237, *Missouri, Kansas & Texas Ry. Co. vs. Blake-more et al.* (R., 103), and No. 1267, *Missouri, Kansas & Texas Ry. Co. vs. Hayes et al.* (R., 159), are in all respects similar to No. 1235.

The demurrers were not effective to oust the jurisdiction of the Circuit Court. If the court had passed on them, they might have properly been overruled, on the ground that the bills did not show on their face that the suits were against the State, or that injunctions were sought to stay proceedings in the State courts. It was only by a pleading of fact and proof that the defendants could have raised in the Circuit Court the issues which the State of Oklahoma seeks to raise here by its unverified and unsupported petition for the writ.

The records in none of these cases support the allegation in the petition for the writ "that the relief sought in each of said suits hereinabove referred to is the staying of proceedings in petitioner's said courts, which said proceedings are instituted and prosecuted by petitioner in its said courts pursuant to the terms and provisions of said sections 4184 and 4185, *supra*, of petitioner's said laws, and in manner and form as hereinabove set forth in section V of this petition, and to enjoin this petitioner, the State of Oklahoma, from prosecuting any action in its said courts, under and pursuant to said sections 4184 and 4185, *supra*, of peti-

tioner's said laws, against any intoxicating liquors, etc." (Petition, p. 31). None of these cases shows even such error as would justify an appeal, much less the extraordinary remedy of prohibition.

Cases No. 1225, 1232, and 1242.

These were bills in equity by foreign liquor houses against State officers named as such.

No. 1225 (R., 17), *Thixton, Millett & Co. vs. S. W. Stone, State dispensary agent; John Hayes, assistant counsel to the Governor, et al.*, was a suit by a Kentucky corporation against citizens of Oklahoma occupying various official positions under the laws of that State. The purpose of the bill was to restrain said officials from enforcing the State law, known as the Billups Bill (Comp. Stats. Oklahoma, 1909, Secs. 4156-4209), as against liquors shipped by plaintiffs from Kentucky and consigned to *bona fide* consignees in Oklahoma by railroad, until the inter-state transportation had terminated and said liquors had been delivered to the consignees. The bill was verified and supported by affidavits (R., 27). A temporary injunction was issued (R., 30) which restrained defendants "from seizing or causing to be seized, either directly or indirectly, or ordering or directing any person to seize any intoxicating liquors shipped by the complainant, Thixton, Millett & Company, a corporation, from the State of Kentucky to actual, *bona fide* consignees within the eastern district of the State of Oklahoma, while the same is in the possession of the common carrier, and before the same has been delivered either actually or constructively to such consignees." Defendants excepted to this order, and a stipulation was filed (R., 32) to the effect that the seizures stated in the bill had been made pursuant to warrants issued out of State courts. Defendants also filed a demurrer to the bill (R., 33) on the ground that the "relief prayed for is in direct violation of the Eleventh Amendment to the Constitution of the United States, and of section 720 of the

Revised Statutes of the United States." The demurrer was overruled (R., 40) after hearing, and an injunction was granted on a supplemental bill which had been filed since the issuance of the previous temporary injunction. The order stated (R., 41):

"*Provided, however,* That this order shall not apply to any liquor shipped in violation of section 3449 of the Revised Statutes of the United States, or to liquors shipped in violation of sections 238, 239, and 240, or the act of Congress of March 4, 1909, 35 Stat. L. 1136-7, or to any such liquors which are adulterated or misbranded within the meaning of the act of Congress of June 30, 1906, ch. 3915, 34 Stat. L., 768, commonly known as the Pure Food and Drugs Act, or to any such liquors shipped in violation of any other act of Congress."

No. 1232 (R., 43), *Danciger et al. vs. S. W. Stone et al.*, was in all respects similar to the foregoing case. The injunction appears at Record, 60. By a restraining order (R., 69) issued on a supplemental bill (R., 61), certain of the defendants were prevented from disposing of liquors which they had already seized acting as State officers, but this was subsequent to the issuance of the temporary injunction and on a showing that it had been violated.

No. 1242 (R., 124), the *O. F. Haley Co. vs. S. W. Stone et al.*, differs in no material respect from Nos. 1225 and 1232, except that the restraining order (R., 134) protects all interstate liquor shipments until delivery to the consignee, and does not except therefrom liquors shipped in violation of the several United States statutes mentioned in the previous orders.

The injunctions asked and granted in these cases did not violate section 720, R. S., as they did not stay nor affect any proceedings pending in the State courts. The relief granted was only against future seizures. Prior seizures were alleged and referred to, but only in the stating parts of

the bill; there was no order relating to any such prior seizures and no interference by the Federal court with State officials as to past acts or pending proceedings. The suits were not against the State, but only against State officials, to prevent them from enforcing against the plaintiffs a State statute which, whether valid or not on its face, was invalid as to plaintiffs under the state of facts set forth in the bills on which the Circuit Court acted. The injunctions were therefore properly granted and certainly not beyond the jurisdiction of the court.

Ex parte Young, 209 U. S., 123.

Western Union Telegraph Co. vs. Andrews, 216, U. S., 165, and other authorities collected in the brief of Atchison, Topeka & Santa Fe Railway Co., filed in No. 14.

The Granting of the Writ of Prohibition Will Enable Local Officers to Interfere with the Operation of the Revenue Laws and Other Laws of the United States.

In response to a question by one of the justices at the argument, it was stated by counsel for petitioner that under the laws of Oklahoma, where liquors were seized by State officials from a common carrier and it developed at the hearing that the liquors were in course of interstate transportation and had not yet been delivered to the consignee, the State officials returned said liquors to the carriers.

This statement was erroneous. The petition states that the State courts try not only this issue, but also three others (Petition, p. 31):

“(a) The issue as to whether or not the particular intoxicating liquor in question was, at the time of its seizure, a *bona fide* shipment made to a person within petitioner’s borders from a place outside of petitioner’s borders, which said shipment had not been delivered by the interstate carrier under the con-

tract of interstate shipment to the consignee at the place of destination.

“(b) The issue as to whether or not the particular intoxicating liquor in question had been shipped from a place outside of petitioner’s borders to a place within petitioner’s borders in violation of section 3449 of the Revised Statutes of the United States.

“(c) The issue as to whether or not the particular intoxicating liquor in question had been shipped from a place outside of petitioner’s borders to a place within petitioner’s borders in violation of any one or more of sections 238, 239, and 240 of the act of Congress of March 4, 1909 (35 Stat. L., 1136-7).

“(d) The issue as to whether or not the particular intoxicating liquor in question, although shipped from a place outside of petitioner’s borders to a place within petitioner’s borders and in the possession of the interstate carrier, undelivered under the contract of interstate shipment at the time the seizure was made, is ‘adulterated’ or ‘misbranded’ within the meaning of the act of Congress of June 30, 1906, chapter 3915, 34 Stat. L., 768, commonly known as the Pure Food and Drugs Act.”

In the event that any one of these issues is decided in favor of the State—

“Petitioner’s said judicial tribunals hold said commerce clause of the Constitution of the United States, *supra*, to be inapplicable on the ground that said intoxicating liquor is not and, under such circumstances, could not be made a legitimate subject of interstate commerce, and therefore, as to all such liquor, petitioner’s said judicial tribunals proceed regardless of the fact that the same may have been in the possession of an interstate common carrier undelivered under a contract of interstate shipment at the time the seizure was made” (Petition, p. 29).

In cases 1225 and 1232 the injunctions (R., 41, R., 59) were so framed as not to prevent the State officials from seizing liquors which were shipped in violation of the United States statutes cited in any of the foregoing paragraphs, but this looks

like an abundance of caution, in so far as paragraphs (b), (c), and (d) are concerned, because there is no authority granted to the States to interfere with interstate commerce because of a violation of any of these statutes.

(b) Section 3449 of the Revised Statutes provides:

"Whenever any person ships, transports, or removes any spirituous or fermented liquors or wines, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks or packages containing the same, or causes such act to be done, he shall forfeit said liquors or wines, and casks or packages, and be subject to pay a fine of five hundred dollars."

This section is part of the Internal Revenue Act of July 13, 1866, ch. 184, 14 Stat. L., 156, and its purpose is "to prevent frauds on the revenue (of the United States) in the manufacture, removal, shipment, and sale of distilled spirits and other liquors, and to aid in the detection of such frauds" (Circuit Judge Caldwell, in *United States vs. 132 Packages of Liquor*, 76 Fed., 367); *United States vs. Campe*, 89 Fed., 697. In view of its manifest purpose to protect the revenue the United States courts confine the application of the statute to distillers, brewers, manufacturers of wine, etc. (*United States vs. Twenty Boxes of Corn Liquor*, 123 Fed., 135); but petitioner's courts extend it to common carriers engaged in interstate traffic. The acts of petitioner's State officials in seizing liquors on the ground that they are shipped in violation of this section is a plain interference with the revenues of the United States. If a shipment is found to violate this section petitioner's officials do not turn it over to any official of the United States for forfeiture to the United States, but, on the contrary, they "proceed regardless" (Petition, 29) to abate the liquors as a public nuisance (sec. 4193 Comp. Laws of Oklahoma, 1909; Petition, p. 16), and to enforce, among other State laws, section 4190, Comp. Laws of Oklahoma, 1909, which is section 11 of the Billups Bill, but is not

printed in the petition and which provides: "All liquors adjudged forfeited to the State under the provision of this act shall, as far as practicable, be utilized by the superintendent for the benefit of the State agency." In other words, it is sold for the benefit of the State, and the right of the United States to enforce forfeiture is prevented.

(c) Sections 238, 239, and 240 of the act of Congress of March 4, 1909 (35 Stat. L., 1136-7), is the so-called "Humphrey Amendment" to the penal code of the United States. It penalizes the shipment of liquors in interstate commerce unless the packages are "labeled on the outside cover as to plainly show the name of the consignee, the nature of the contents, and the quantity contained therein." and also provides against delivery except to the *bona fide* consignee, and forbids collection of the purchase price under certain circumstances.

(d) The Food and Drugs Act makes it an offense for any person to introduce into any State or Territory from any other State or Territory any article which is adulterated or misbranded within the meaning of the act.

Both these statutes create new offenses against United States laws, and provide appropriate penalties to be enforced in the United State courts by government officials; it is nowhere declared that the offenses created by these laws remove the offending articles out of the domain of interstate commerce, or that a State acquires jurisdiction over suspected goods during the interstate transportation for the purpose of adjudging the goods forfeit. By section 10 of the Food and Drugs Act the district court of the United States in the district where suspected goods have been seized by government officials is vested with authority to try the question whether they are adulterated or misbranded, and

in case of condemnation the judge may order the goods sold, "and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States." But petitioner's officials "proceeding regardless," if the State court decides that the goods are adulterated or misbranded within the meaning of the act, turn them over to the superintendent for the benefit of the State agency, where they are sold to the public, and the purchase-money is appropriated by the State to build roads and bridges (Comp. Laws of Oklahoma, secs. 4190, 4207). Thus the United States is prevented from enforcing its laws in its own courts, and deprived of revenues due it under section 10.

It is to be noted that there is nothing in the statutes of Oklahoma, which authorizes the State officials to interfere with liquors in transit before delivery, or which authorizes any interference on the ground that the several United States statutes are being violated. The petition for the writ (R., 26) shows that these are its methods of enforcing its prohibition laws, but no State statute is relied on.

The Federal court having first assumed jurisdiction, will retain it to the exclusion of the State courts and officers as to subsequent proceedings.

It is urged in the brief for Atchison, Topeka and Santa Fe Railway Co. (p. 49) that continuous seizures of liquors in transit by State authorities for the purpose of ascertaining whether they are or may be obnoxious to the police laws of the State is in itself an unconstitutional burden placed upon interstate commerce. This view is supported by many cases in this court. In *Hanley vs. Kansas City Southern Railway Co.*, 187 U. S., 617, 619, Mr. Justice Holmes, delivering the opinion of the court, said:

"Transportation for others, as an independent business, is commerce, irrespective of the purpose to sell or retain the goods which the owner may entertain with regard to them after they shall have been delivered."

In *Adams Express Co. vs. Kentucky*, 206 U. S., 135, and *American Express Co. vs. Kentucky*, 206 U. S., 139, the court held unconstitutional a State statute which, as interpreted by the State court, compelled the interstate carrier to ascertain at its peril whether the consignee had ordered the liquors to be shipped to him from a foreign State, and in *Adams Express Co. vs. Kentucky*, 214 U. S., 218, a similar decision was reached where the State law compelled the carrier to ascertain whether the consignee of liquors was a drunkard, and penalized the carrier if it turned out that the consignee was not.

It is argued in the brief for petitioner, however, that the "judicial power" of the State of Oklahoma attaches to liquors as soon as they come within the boundaries of the State, and while it is admitted that the "police power" does not attach until delivery to the consignee, it is contended that the State under its judicial power may seize the goods, and by trial under the statute proceed to determine whether the articles are subject to the police power. Even if this contention could be supported, yet the Federal court, also, in a proper case may take jurisdiction over the parties and determine for itself whether seizures so made are legal, and after the Federal court has taken jurisdiction it will by injunction or other appropriate means prevent the State court from thereafter seizing or otherwise interfering with persons or things involved in the Federal case.

Seulley vs. Bird, 209 U. S., 481.

Vance vs. Vandercook (No. 1), 170 U. S., 438.

Ex parte Young, 209 U. S., 123.

Western Union Telegraph Co. vs. Andrews, 210 U. S., 165.

Cases No. 1236 and 1266.

No. 1236 (R., 83), *Missouri, Kansas & Texas Railway Co. vs. Watson et al.*, and No. 1266 (R., 141), *Fehrenbacher Wine & Liquor Co. vs. S. W. Stone et al.*, which have no

heretofore been referred to, are in many respects similar to the other cases which are reviewed, and governed largely by the same principles. No. 1236, however, differs from the other suits brought by the railroad company in that the record contains a stipulation (R., 94) to the effect that the goods were taken from the railroad company under a search warrant issued by a justice of the peace, copy of which is attached (R., 95). No. 1266 differs from the other suits instituted by foreign liquor houses in that the bill specially sets up that the law under which the State officials proceeded in making seizures does not provide for any notice to be given the owners of liquors of the time or place of the trial, and that defendants "are threatening to seize and cause to be seized all liquors shipped by said petitioner in the manner and form aforesaid, and to have the same confiscated without any notice whatever to your petitioner, all of said acts violating the Fourteenth Amendment of the Constitution of the United States" (R., 146). The unconstitutionality of the Oklahoma statute under the Fourteenth Amendment is discussed in the brief for Atchison, Topeka and Santa Fe Railway Company (p. 43). The Circuit Court may have granted the injunction on the ground that the statute violated the Fourteenth Amendment as well as the commerce clause.

Conclusion.

The foregoing review of the cases in which the Circuit Court acted indicates that this application for the writ of prohibition shows no case of an inferior court exceeding its jurisdiction. On the contrary, the orders of the court below appear to be generally not only within the jurisdiction of the court, but also probably unassailable on any ground. The court below considered a great variety of facts, involving various questions of law; if errors were committed there is full right of review in the court of appeals or this court. The petitioner seems to ask a blanket prohibition, to cover

further proceedings in these cases, and also to be enforced against the lower court in other cases which may arise in future and which may involve other States of fact and questions of law (Petition for Writ, VI, p. 30 *et seq.*).

We find no case in which the court has awarded prohibition in proceedings similar to these. This is not a case in which the court has original jurisdiction (*In re Massachusetts*, petitioner, 197 U. S., 482), and therefore the rule announced in *Smith vs. Whitney*, 116 U. S., 167, that the writ does not serve the purpose of a writ of error or certiorari, and that it is rarely granted where there is another legal remedy seems particularly applicable.

We respectfully submit that the petitions for the writs in both cases should be denied.

LAWRENCE MAXWELL,
JOSEPH S. GRAYDON,
E. G. McADAMS,

Amici Curiz.



IN THE
Supreme Court of the United States.

OCTOBER TERM, 1910.

THE STATE OF OKLAHOMA, ONE OF THE
UNITED STATES OF AMERICA, BY CHARLES
N. HASKELL, GOVERNOR AND SUPREME
EXECUTIVE OFFICER THEREOF,

PETITIONER,

THE CIRCUIT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF OKLA-
HOMA AND RALPH E. CAMPBELL, THE
DISTRICT JUDGE OF SAID DISTRICT, SIT-
TING AS JUDGE OF SAID CIRCUIT COURT,

RESPONDENTS.

THE STATE OF OKLAHOMA, ONE OF THE
UNITED STATES OF AMERICA, BY CHARLES
N. HASKELL, GOVERNOR AND SUPREME
EXECUTIVE OFFICER THEREOF,

PETITIONER,

THE CIRCUIT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF OKLA-
HOMA AND JOHN H. COTTERAL, THE DIS-
TRICT JUDGE OF SAID DISTRICT, SITTING
AS JUDGE OF SAID CIRCUIT COURT,

RESPONDENTS.

BRIEF ON BEHALF OF THE MISSOURI, KANSAS & TEXAS
RAILWAY COMPANY IN REPLY TO SUPPLEMENTAL
BRIEF OF COUNSEL FOR COMPLAINANT.

JOSEPH M. BRYSON,
CLIFFORD L. JACKSON,
WILLIAM R. ALLEN,

Solicitors.

JAMES HAGERMAN,
BREITON & GRAY,

Of Counsel.

Office Supreme Court

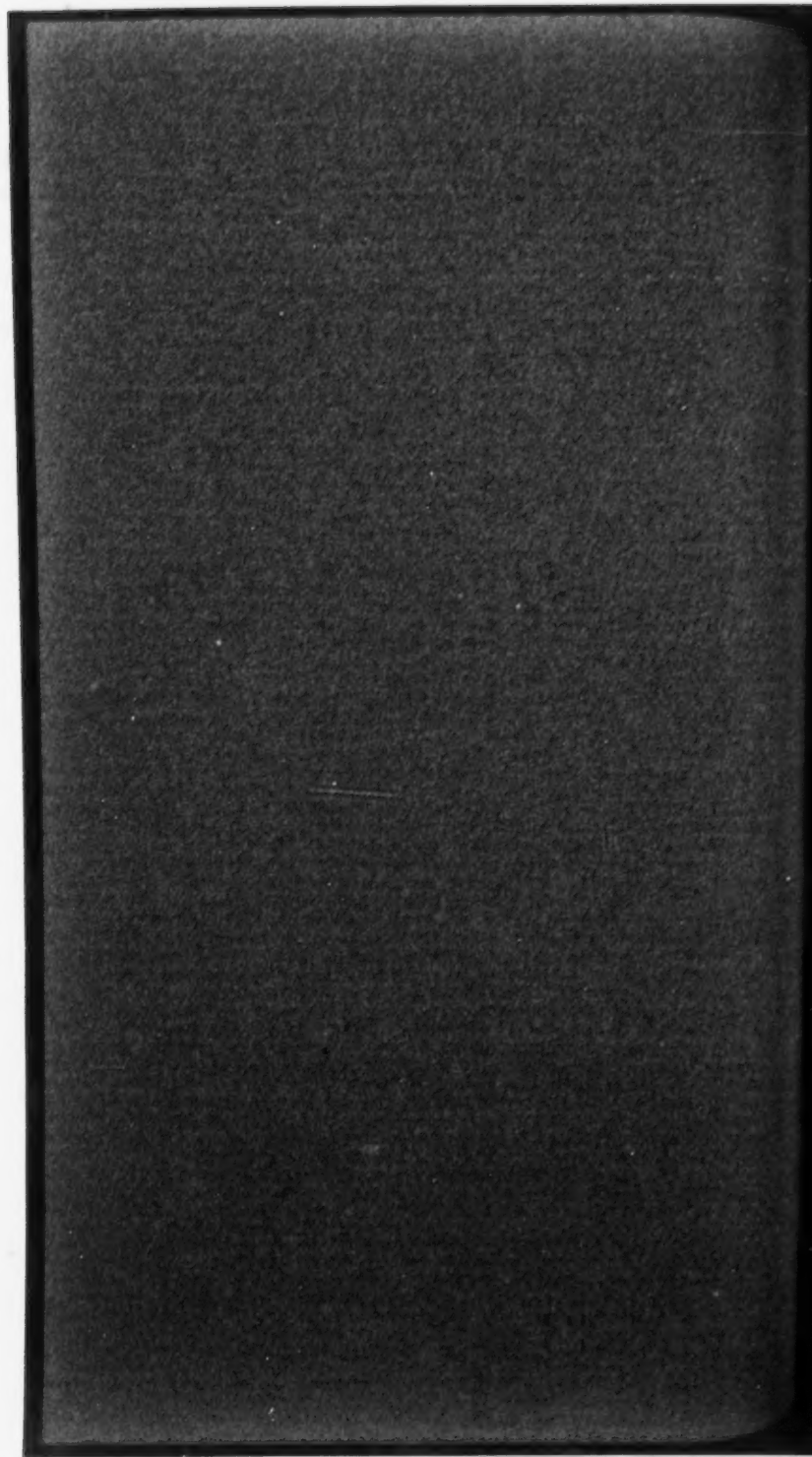
FILED

FEB 16 1911

JAMES H. McKE

No. 9. Original.

No. 10 Original.



IN THE
Supreme Court of the United States.

OCTOBER TERM, 1910.

THE STATE OF OKLAHOMA, ONE OF THE
UNITED STATES OF AMERICA, BY CHARLES
N. HASKELL, GOVERNOR AND SUPREME
EXECUTIVE OFFICER THEREOF,

PETITIONER,

VS.

THE CIRCUIT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF OKLA-
HOMA AND RALPH E. CAMPBELL, THE
DISTRICT JUDGE OF SAID DISTRICT, SIT-
TING AS JUDGE OF SAID CIRCUIT COURT,

RESPONDENTS.

No. 9. Original.

THE STATE OF OKLAHOMA, ONE OF THE
UNITED STATES OF AMERICA, BY CHARLES
N. HASKELL GOVERNOR AND SUPREME
EXECUTIVE OFFICER THEREOF,

PETITIONER,

VS.

THE CIRCUIT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF OKLA-
HOMA AND JOHN H. COTTERAL, THE DIS-
TRICT JUDGE OF SAID DISTRICT, SITTING
AS JUDGE OF SAID CIRCUIT COURT,

RESPONDENTS.

No. 10 Original.

**BRIEF ON BEHALF OF THE MISSOURI, KANSAS & TEXAS
RAILWAY COMPANY IN REPLY TO SUPPLEMENTAL
BRIEF OF COUNSEL FOR COMPLAINANT.**

The petitioners have filed a supplemental brief in
these two cases on the ground that in the original brief

the counsel could not make specific reference to particular portions of the response of either of the respondents and such supplemental brief is confined to a discussion of the matters involved in two cases referred to in the response of Judge Campbell, one of which is the case in the United States Circuit Court, Eastern District, Oklahoma, Court Number 1236, styled Missouri, Kansas & Texas Railway Company, complainant vs. Robert B. Watson, W. F. Blakemore and Clark W. Compton, defendants, as set forth at pages 83 to 103 of the printed response of Judge Campbell and special reference is made to stipulation entered into between the solicitors in that case as to certain facts and to the fact that this stipulation shows that there had been a search warrant issued by Justice of the Peace Bailey, and had been executed by seizure of certain interstate shipments of liquor in possession of the common carrier by Robert B. Watson, as Constable of Porter Township in Muskogee County, Oklahoma, and his Deputy W. F. Blakemore.

It is respectfully submitted that under the prohibition statute in force in the State of Oklahoma at the time this warrant was issued and the seizure was made that both the warrant was void on its face and the seizure by the constable was unauthorized by the Statute of the State. Section 5 of an Act of the Legislature of the State of Oklahoma, approved March 24th, 1908, and found at page 605 of the Session Laws of Oklahoma, 1907 and 1908, is as follows:

“If it shall be made to appear to any judge of the district or county court or justice of the peace

that there is probable cause to believe that liquors are being manufactured, sold, bartered, given away, or otherwise furnished, or are being kept for the purpose of selling, bartering, giving away, or otherwise furnishing liquors in violation of this Act, such judge or magistrate shall issue a warrant directed to any officer of the county whom the complainant may designate, having the power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant, and to seize all such liquors there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away, or otherwise furnishing of such liquors, and safely keep the same, and to make return within three days of said warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession the same was found, if any, and if no person be found in the possession of said property, his return shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such liquors, furniture or fixtures so seized, and if no person be found in the possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same are found."

The warrant actually issued in this case is set forth

at pages 95 and 96 of the printed response of Judge Campbell and it is apparent from a reading of it that it does not so fully and properly comply with the above quoted Section 5 of the Oklahoma Prohibition Statute, as to make it a valid warrant upon its face.

If, however, it were a valid warrant and authorized the proper officials to execute the same and to make seizure of the liquor thereunder, it is respectfully submitted that neither a constable nor his deputy would be such officer or have such power, for this same Section 5, hereinabove quoted, provides that this warrant shall be executed by an officer of the county and the warrant shall be so directed; that part of the language of the section being:

“Such judge or magistrate shall issue a warrant directed to any officer of the county whom the complainant may designate, having the power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant, and to seize all such liquors there found.”

The warrant in question was directed “To any Sheriff, Constable, Marshal or Policeman in the County of Muskogee.” It is conceded that had the Sheriff of Muskogee County or any of his deputies undertaken to serve this warrant the execution thereof by such officer would have been legal had the warrant been valid.

It is further contended that under the language of Section 5, of the Oklahoma Prohibition Statute above

quoted, that no other officer comes within the terms of the prohibition law as having the power to execute one of these search and seizure warrants, except the sheriff or his deputy, as he is the only officer of the county, under the statute of Oklahoma having the power to serve criminal process. The "Marshal or Policeman" named in this search and seizure warrant would necessarily be an officer of some town or city. Constable Watson who acted through his Deputy Blakemore in this transaction was an officer of Porter Township in Muskogee County. It is not conceded in such stipulation that he is an officer of the county, but it is conceded he is an officer of Porter Township, which is a small part of Muskogee County.

The powers of search and seizure conferred by Section 5 of the Oklahoma Prohibition Statute above quoted are extraordinary in their character and it is evident that the Legislature did not intend to vest such extraordinary powers in such officers as constables, marshals and policemen, to whom this search warrant was directed. It would have been an extreme proposition for the Legislature to have authorized policemen who give no bond at all and city marshals and constables who give very small bonds to execute these search warrants and enter the homes and business places within the State of Oklahoma and seize vast quantities of liquor when these officers could not be made to respond in case of wrongful conduct and the Legislature undoubtedly had this in mind when it limited the officers to whom such authority was given to officers of counties.

It must necessarily follow that if constables are authorized to execute these search and seizure warrants under the limitations of this Section 5 of the Oklahoma Prohibition Statute, above quoted, that marshals and policemen come within such limitations. Neither constables, marshals, nor policemen are officers *of* the county, but are all officers in a county and each and all three of them have similar powers as to serving criminal process. It has actually happened under warrants issued as this one was that whole car loads of liquor have been seized by police officers and that such police officers retained possession of such liquor without any pretense of an official bond and without the slightest prospect of their ever being able to respond, if they transcended their duties in making such seizure or if they were unfaithful while in charge of such liquors or any loss or damage occurred thereby. It can therefore be plainly seen why the Legislature in its wisdom limited the power of execution of these extraordinary search and seizure warrants to sheriffs and their deputies and these officers alone.

It is probably unnecessary to call the attention of the Court to the fact that such statutes as this one ought to be given strict rather than liberal construction.

If either the warrant under which the seizure in this particular case was made was void or if the constable who executed it and made the seizure was acting beyond the pale of the law then it was clearly the duty of the United States Circuit Court of the Eastern District of Oklahoma to have granted the injunctive relief which it did grant and to have directed the return of

the goods so unlawfully and improperly taken in order to prevent an undue and improper interference with interstate commerce and with this interstate common carrier in its discharge of its proper duties. High on Injunctions, third edition, Vol. 2, Sec. 1309, on this proposition, has the following:

“In applications for relief by injunction against the acts of public officers the determining point is, ordinarily, whether they are acting within the scope of their authority, or whether they are transcending that authority. And while equity will not interfere while such officers are acting within the authority conferred upon them by law, to determine whether their action is good or bad, yet if they assume powers over property which do not belong to them, and infringe upon or violate the rights of citizens under pretense of such assumed authority, equity has jurisdiction to interfere for the protection of the citizen.”

This court has plainly pointed out the fair course to be pursued where the warrant is valid and where the seizure is made by a proper officer in the case of *The American Express Company vs. Mullins*, 212 U. S. 311, 53 L. Ed. 525, but in this case no such course could be followed and there was no relief for the common carrier where the State statute had been disregarded unless it could be protected in the discharge of its proper duties in carrying interstate freight by the United States Circuit Court in a bill for injunction such as this one was.

The second case referred to in this supplemental brief is the case of Thixton, Millett & Company vs. Stone et al., Court Number 1225, referred to briefly at page 15 of the supplemental brief and in this supplemental brief the attention of this Honorable Court is especially called to the stipulation in this case Number 1225 at pages 32 and 33 in the response of Judge Campbell. It is respectfully submitted there is nothing extraordinary about this stipulation. It merely stipulates that:

“The relief which the complainant herein is asking is that the defendants herein be enjoined from executing such search warrants so to be issued by said State courts under and pursuant to said facts and prosecuting the same, in all cases where the execution of such search and seizure warrants necessitates the taking and seizing of intoxicating liquors shipped into the State of Oklahoma by complainant herein by interstate commerce, where such interstate shipments of intoxicating liquors are in the hands of the interstate carrier, and prior to the delivery thereof by the interstate carrier to the consignees at the point of destination in the State of Oklahoma under the terms and provisions of the contract of interstate shipments.”

If any action on the part of either of the United States Courts in the State of Oklahoma in such cases as this can be justified, it will be justified in cases covered by this stipulation along the lines of the decisions

of this Court referred to in the original brief filed on behalf of the different railway companies in these two cases citing those decisions.

We respectfully ask the Court to consider the brief heretofore filed by the Atchison, Topeka & Santa Fe Railway Company and this Company in the above entitled cause numbered 10, as filed not only in that case, but in cause No. 9, as everything contained in that brief, while only entitled as in cause numbered 10, was intended to and does cover and apply to both cases.

Respectfully submitted,

JOSEPH M. BRYSON,
CLIFFORD L. JACKSON,
WILLIAM R. ALLEN.

JAMES HAGERMAN,
~~BREITON & GRAY~~, *A. B. Burne*
Of Counsel.

IN THE
SUPREME COURT
OF THE
UNITED STATES

The State of Oklahoma, one of the
United States of America, by Charles
N. Haskell, Governor and Supreme
Executive Officer thereof, Petitioner.

vs.

The Circuit Court of the United
States for the Eastern District of
Oklahoma and Ralph E. Campbell,
the District Judge of said District,
sitting as Judge of said Circuit
Court, Respondents.

No. 9 Original.

The State of Oklahoma, one of the
United States of America, by Charles
N. Haskell, Governor and Supreme
Executive Officer thereof, Petitioner.

vs.

The Circuit Court of the United
States for the Western District of
Oklahoma and John H. Cotteral, the
District Judge of said District, sit-
ting as Judge of said Circuit Court,
Respondents.

No. 10 Original

PETITIONER'S SUPPLEMENTAL BRIEF.

When Petitioner's original brief was prepared
and filed in these cases, the respondent had not, in

either case, filed his response to the rule to show cause, and therefore it was impossible to assist the Court by making specific reference to particular portions of either response, and for this reason, as well as the reason that we have some additional authorities to present, we desire to submit this supplemental brief.

In case No. 9, the pleadings filed and the proceedings had in the Circuit Court of the United States for the Eastern District of Oklahoma, in suit No. 1236, styled Missouri, Kansas & Texas Railway Company, Complainant vs. Robert B. Watson, W. F. Blakemore and Clark W. Compton, Defendants, are set forth at pages 83 to 103. In the bill of complaint (Response 85 to 88), it is alleged:

“Further complaining, your orator states that the above named defendants and each of them are interfering with the interstate business of your orator in the handling and transporting and delivery of such interstate shipments of liquor, claiming to act under the authority of an Act of the Legislature of the State of Oklahoma, entitled:

“‘An Act to establish a State Agency and Local Agencies for the sale of Intoxicating Liquors for certain purposes; and providing for referring the same to the people; prohibiting the manufacture, sale, barter, giving away, or otherwise furnishing of Intoxicating Liquors, except as herein provided; providing for the appointment of an attorney, and for the enforcement of the provisions of this Act: Making an appropriation and declaring an emergency.’”

“Approved March 24, 1908, and that on the 7th day of December, 1909, the defendants, W. F. Blakemore and Clark W. Compton, unlawfully and wrongfully entered the depot building of your orator at its station at Muskogee, in the said Eastern District of the State of Oklahoma,

and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire, and upon which the freight charges had not been paid and bills of lading had not been surrendered, and no delivery made by your orator:

"One box of whiskey consigned from Harvest & King D. Co., Kansas City, Missouri, to shippers order, notify Clarence A. Hill, Muskogee, Oklahoma.

One box of whiskey consigned from Harvest & King D. Co., Kansas City, Missouri, to Geo. K. Davidson, Muskogee, Oklahoma.

One case beer consigned from A. V. Co., Kansas City, Missouri, to F. G. Manson, Muskogee, Oklahoma.

Five cases whiskey consigned from O. F. Haley, Gainesville, Texas, to E. M. McFarland, Muskogee, Oklahoma.

One case whisky consigned from Levi Shier Dis. Co., Kansas City, Missouri, to shippers order, notify James P. Wallace, Muskogee, Oklahoma.

One barrel beer consigned from J. B., Kansas City, Missouri, to A. J. Gardenhier, Muskogee, Oklahoma.

One barrel beer consigned from J. B., Kansas City, Missouri, to Jno. L. Winener, Muskogee, Oklahoma.

One case beer consigned from Royal Bwy. Co., Kansas City, Missouri, to shippers order, notify M. Ellis, Muskogee, Oklahoma.

One box liquor from Maryland Wine & L. Co., Kansas City, Missouri, to shippers order, notify Henry Williams, Muskogee, Oklahoma.

Two boxes liquor consigned from Maryland Wine & L. Co., Kansas City, Missouri, to shippers

order, notify Mike Adamson, Muskogee, Oklahoma.

Three boxes liquor consigned from Maryland Wine & L. Co., Kansas City, Missouri, to shippers order, notify C. Jones, Muskogee, Oklahoma.

One cask beer consigned from Reder Mfg. Co., Joplin, Missouri, to R. G. Emmert, Muskogee, Oklahoma.

One cask beer consigned from Reder Mfg. Co., Joplin, Missouri, to F. C. Sananire, Muskogee, Oklahoma.

Two cases liquor consigned from Reder Mfg. Co., Joplin, Missouri, to shippers order, notify Jack Gordon, Muskogee, Oklahoma.

One drum whiskey in glass consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify Henry Hawkins, Muskogee, Oklahoma.

Two boxes whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify J. Gordon, Muskogee, Oklahoma.

One box whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify R. Butler, Muskogee, Oklahoma.

One box whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify R. Butler, Muskogee, Oklahoma.

One drum whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify Middleton & Davis, Muskogee, Oklahoma.

One box whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify J. A. Hardick, Muskogee, Oklahoma.

One drum whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify Middleton & Davis, Muskogee, Oklahoma.

"And your orator states that on the same day the said W. F. Blakemore and Clark W. Compton unlawfully and wrongfully entered the depot building of your orator at its station at Muskogee, in the said Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor, which were in the possession of your orator as a common carrier for hire, and upon which its bill of lading was still outstanding and no delivery made thereunder:

"Sixteen barrels beer consigned from Tom Owens, Muskogee, Oklahoma, to Redell Mfg. & Supply Co., at Joplin, Missouri.

Five barrels whiskey consigned from Lee Spurlock, Muskogee, Oklahoma, to Casey Swasy Co., Ft. Worth, Texas.

At pages 94 to 96 it appears that, upon the hearing of complainant's application for a temporary injunction, it was agreed by and between Mr. Clifford L. Jackson, solicitor for complainant, and Mr. W. J. Crump, county attorney, appearing for the defendants, as follows:

"It is hereby stipulated and agreed as far as this hearing is concerned, by and between the plaintiff and the defendants herein, that the intoxicating liquors seized by the defendants, as mentioned in plaintiff's complaint, were seized by virtue and under a search warrant, issued from the Justice Court of M. G. Bailey, Justice of the Peace of Porter township in the county of Muskogee, state of Oklahoma, upon an affidavit which had been filed with said Justice Court.

"That said Robert B. Watson, is the duly qualified and acting constable of Porter Township, Muskogee County, State of Oklahoma, and that the other defendants are and were at the time of the seizure of said liquors, deputies acting under him. And, that they, as such officers,

were serving said search warrant issued by said Justice of the Peace at the time they seized the intoxicating liquors mentioned in plaintiff's bill.

"A copy of the warrant under which said defendants were acting is attached hereto.

CLIFFORD L. JACKSON (G),
Attorney for Complainant.

W. J. CRUMP, Co. Atty.,
Attorney for Defendants.

Filed in open court, Dec. 22, 1909.

L. G. DISNEY,
Clerk U. S. Circuit Court, Eastern Dist. Okla.

SEARCH WARRANT.

STATE OF OKLAHOMA, }
MUSKOGEE COUNTY. } ss.

In The Name of the State of Oklahoma:

To any Sheriff, Constable, Marshal or Policeman in the County of Muskogee, greeting:

Proof by affidavit having been made this day before me by W. F. Blakemore, showing that on the 7th day of December, 1909, M., K. & T. Ry. freight depot at number between Okmulgee and Broadway street, in a certain building described as one story brick, used as freight depot and place to store intoxicating liquors for purpose of sale, in Muskogee City, did, then and there, unlawfully and wilfully have in their possession and under their control, and did, then and there keep, and do now have in their possession and under their control, and do now keep for the purpose of selling, bartering, giving away and otherwise furnishing certain intoxicating liquors, described as follows, to-wit: Wine, whiskey, beer, ale, gin, furniture and fixtures, and affiant further says that said defendants aforesaid, at said place and in said

building, are now bartering, selling and giving away intoxicating liquors, to-wit: Whiskey, beer and wine, and other compounds, the same being intoxicating, in violation of law, contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the State of Oklahoma:

And it appearing that there is probable cause for believing that such grounds are true, you are, therefore, commanded in the day or night time, to make immediate search of the above described property, and to seize and safely keep and bring before the undersigned any and all of the above described property, and to serve a copy of this warrant upon the defendants and each of them, or any person or persons in whose possession or under whose control the above described property may be found, and if no person be found in the possession of said property, so state in your return and post a copy of this warrant on the door of the building or room wherein the said property is found and make return of this warrant within three days from the issuance thereof.

Dated this 7th day of December, 1909.

(Signed.)

M. G. BAILEY,
Justice of the Peace.

STATE OF OKLAHOMA, }
MUSKOGEE COUNTY. } ss.

“Received this writ, this 7th day of December, 1909, and executed the same by arresting said, and by seizing the following described property, the same being covered by this warrant, to-wit: Five barrels whiskey, 3 drums whiskey, 2 cases beer, 2 cases wine, 3 kegs draft beer, 5 barrels beer, 50 cases whiskey, on the day of, 19...., and by bring-

ing the defendants and said property before the court as commanded.

“R. B. WATSON, Constable.

“W. F. BLAKEMORE, Deputy.”

The temporary injunction order made in the case, upon said hearing, appears at pages 97 to 101 of the response and among other things, provides:

“It is therefore ordered that the defendants, Robert B. Watson, W. F. Blakemore and Clark W. Compton, be and they are hereby enjoined and restrained from interfering with or seizing or receiving or aiding, abetting, advising or encouraging any other person or persons to interfere with or seize any shipment of whiskey, beer, wine, brandy or other liquors that may be in the possession of the complainant, the Missouri, Kansas & Texas Railway Company, consigned from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, or from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that said defendants and each of them be and they are hereby enjoined and restrained from entering the cars and depots and other premises of the complainant, Missouri, Kansas & Texas Railway Company in the Eastern District of the State of Oklahoma, and from taking therefrom intoxicating liquors shipped from points without the State of Oklahoma to points within the Eastern District of the State of Oklahoma and from points within the Eastern District of the State of Oklahoma to points without the State of Oklahoma, and that the said defendants and each of them be, and they are hereby enjoined from taking any steps looking to the forfeiture of any of the liquors mentioned in the complainant's bill of complaint herein as having been heretofore unlawfully seized and

taken from complainant's depot at Muskogee, Oklahoma.

"And it is further ordered that the said defendants forthwith deliver over to the complainant or its agent at its depot at Muskogee, Oklahoma, the articles specified in the bill of complaint on file in this cause as having been seized and taken away from the depot of the complainant at Muskogee, Oklahoma, on the 7th day of December, 1909, and described in said bill of complaint as follows:

"One box of whiskey consigned from Harvest & King D. Co., Kansas City, Missouri, to shippers order, notify Clarence A. Hill, Muskogee, Oklahoma.

One box of whiskey consigned from Harvest & King D. Co., Kansas City, Missouri, to Geo. K. Davidson, Muskogee, Oklahoma.

One case of beer consigned from A. V. Co., Kansas City, Missouri, to F. G. Manson, Muskogee, Oklahoma.

Five cases whiskey consigned from O. F. Haley, Gainesville, Texas, to E. M. McFarland, Muskogee, Oklahoma.

One case whiskey consigned from Levi Shier Dis. Co., Kansas City, Missouri, to shippers order, notify James P. Wallace, Muskogee, Oklahoma.

One barrel beer consigned from J. B., Kansas City, Missouri, to A. J. Gardenhier, Muskogee, Oklahoma.

One barrel beer consigned from J. B., Kansas City, Missouri, to Jno. L. Winener, Muskogee, Oklahoma.

One case beer consigned from Royal Bwg. Co., Kansas City, Missouri, to shippers order, notify M. Ellis, Muskogee, Oklahoma.

One box liquor consigned from Maryland Wine & L. Co., Kansas City, Missouri, to shippers

order, notify Henry Williams, Muskogee, Oklahoma.

Two boxes liquor consigned from Maryland Wine & L. Co., Kansas City, Missouri, to shippers order, notify Mike Adamson, Muskogee, Oklahoma.

Three boxes liquor consigned from Maryland Wine & L. Co., Kansas City, Missouri, to shippers order, notify C. Jones, Muskogee, Oklahoma.

One cask beer consigned from Reder Mfg. Co., Joplin, Missouri, to R. G. Emmert, Muskogee, Oklahoma.

One cask beer consigned from Reder Mfg. Co., Joplin, Missouri, to F. C. Sananire, Muskogee, Oklahoma.

Two cases liquor consigned from Reder Mfg. Co., Joplin, Missouri, to shippers order, notify Jack Gordon, Muskogee, Oklahoma.

One drum whiskey in glass consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify Henry Hawkins, Muskogee, Oklahoma.

Two boxes whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify J. Gordon, Muskogee, Oklahoma.

One box whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify R. Butler, Muskogee, Oklahoma.

One box whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify R. A. Butler, Muskogee, Oklahoma.

One drum whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify Middleton & Davis, Muskogee, Oklahoma.

One box whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify J. A. Hardick, Muskogee, Oklahoma.

One drum whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify Middleton & Davis, Muskogee, Oklahoma.

Sixteen barrels beer consigned from Tom Owens, Muskogee, Oklahoma, to Redell Mfg. & Supply Co., at Joplin, Missouri.

Five barrels whiskey consigned from Lee Spurlock, Muskogee, Oklahoma, to Casey Swasey Co., Ft. Worth, Texas."

Accordingly, we see from the response made to this Honorable Court that, notwithstanding it was clearly made to appear to the Circuit Court of the United States for the Eastern District of Oklahoma at the time the application for the temporary injunction order was heard, that the liquors, the seizure of which is complained about in the bill, was made by Robert B. Watson, a duly qualified and acting constable of Porter Township, Muskogee County, State of Oklahoma, and his lawful deputies acting under him, pursuant to a search warrant duly issued by a Justice of the Peace of said Township, and in all respects sufficient and regular upon its face, still the respondent herein wholly ignored the official character of said Constable Watson and his deputies Blakemore and Compton, and wholly ignored and brushed aside, as a void and worthless thing, the search and seizure warrant issued by Bailey as such Justice of the Peace. That in so doing, the respondent exceeded his power and jurisdiction, we desire, in addition to the argument and authorities presented in our original brief, to call the court's attention to two cases which we have found since our original brief was prepared.

The case of Lemp vs. Fullerton, 83 Ia. 192, was a case where a quantity of intoxicating liquor, seized by a sheriff under a search warrant, was sought to be replevined from the sheriff, notwithstanding such

search and seizure warrant. In holding that this could not be done, the Supreme Court of Iowa, at pages 195 to 196, in the opinion, say:

"The plaintiff contends that the law under which the seizure was made by the defendant is unconstitutional, and relies upon the case of *Leisy vs. Hardin*, 135 U. S. 100; 10 Sup. Ct. Rep. 681, as sustaining his claim. In that case the Supreme Court of the United States held that a citizen of one state has a right to import intoxicating liquor into another state, and there sell it in original packages, notwithstanding a prohibition of the statutes of the state into which the liquor was imported, and in which it was sold. So far as such statutes prohibit transactions of that kind, they were held to be in conflict with the constitution of the United States, and, therefore, void. But it was not held that a state may not enforce its police regulations against traffic in liquor which is not in the nature of interstate commerce. The state has the right to enforce such regulations, and one of the means provided is a proceeding by search warrant, such as was adopted in regard to the liquor in controversy. It may be conceded that such liquor was prohibited from forfeiture by reason of the rule announced in the *Leisy* case, and that upon the final hearing before the justice it should have been restored to the plaintiff. *But the object of the proceeding was to ascertain if a law of the state was being violated, not to declare forfeited property which was not subject to its provisions.* In such a case, if the court errs, the party aggrieved has the right of appeal. The proceeding cannot, however, be ignored or treated as a nullity. It is a duly constituted means of ascertaining and determining the rights of the respective parties in interest, including the right of the owner of the property to claim it as exempt from the operation of the state laws, and the decision of the court is binding, as in other cases."

The identical point here in question was presented

to the Supreme Court of Maine in the recent case of *Kalloch vs. Newbert*, 72 Atl. 736, where, in the first four paragraphs of the syllabi, it is held:

"It is a well established rule of law that an officer in the service of a writ or warrant is protected in the performance of his duty, if there is no defect or want of jurisdiction apparent on the face of the writ or warrant under which he acts.

"An officer is not bound to look beyond his process. He is not to exercise his judgment touching the validity of the process in point of law, but, if it is in due form, and is issued by a court or magistrate apparently having jurisdiction of the case, he is to obey its commands.

"There is nothing in the interstate commerce law that renders intoxicating liquors immune from seizure, and the court is not aware of any decision that so holds. But after seizure of such liquors and upon libel and hearing, if it is shown that they were articles of interstate commerce, then the carrier is entitled to a return of such liquors.

"Whether intoxicating liquors are commodities within the protection of the interstate commerce law is a judicial question to be settled by the court, and not one to be determined by the officer as a condition precedent to the execution of his warrant. *The officer is not required to adjudicate whether the liquors described in his warrant are seizable or not.*"

In the body of the opinion, the court say:

"Upon the facts here presented the plaintiff's first ground of complaint is without merit. There is nothing in the interstate commerce law that renders intoxicating liquors immune from seizure, and we are aware of no decision that so holds. But after seizure and upon libel and hearing, if it is shown that they were articles of interstate com-

merce, then the carrier is entitled to a return of the goods. Whether liquors are commodities within the protection of the interstate commerce law is a judicial question to be settled by the court, and not one to be determined by the officer, as a condition precedent to the execution of his warrant. We think this is precisely the rule laid down in *B. & M. Railroad vs. Small*, 85 Me. 462, 27 Atl. 349, 35 Am. St. Rep. 379. The court say: 'It is urged that it may at times work a great hardship upon an innocent owner if an officer must in every case seize whatever intoxicating liquors he finds under a search warrant, however evident it is they are not intended for unlawful sale. The policy of the law is that every owner or keeper of intoxicating liquors shall be prepared to defend them, before the courts and not before the officer against the accusation, that they are intended for unlawful sale.' *In other words, the officer is not required to adjudicate whether the liquors described in his warrant are seizable or not.*

"It is also a rule of law too well established to now require discussion that for reasons founded on public policy, and in order to secure a prompt and effective service of legal process, the law protects its officers in the performance of their duties, if there is no defect or want of jurisdiction apparent on the face of the writ or warrant under which they act. The officer is not bound to look beyond his warrant. He is not to exercise his judgment touching the validity of the process in point of law; but if it is in due form, and is issued by a court or magistrate apparently having jurisdiction of the case or subject matter, he is to obey its commands. The defendant's warrant, if properly executed, was a complete justification."

The foregoing decisions make it very clear that a search and seizure proceeding, under the Oklahoma Statute, as outlined in subdivision V. of the petition herein, is a judicial proceeding—an action in rem—

which is instituted in the state court by the filing of a verified complaint; and the search and seizure warrant, which issues after the state tribunal has judicially determined that probable cause is shown by such verified complaint, is the court's process whereby the offending thing—the intoxicating liquor—is brought before the court for trial. To enjoin the executive officer of the state tribunal, that is, the sheriff or constable, or other peace officer, from executing such search and seizure warrant, is a wholly unauthorized and unlawful interference with a judicial proceeding in a state court. If the federal courts ever had such power—and we respectfully submit they never did—the same was entirely taken away from them by section 720 of the Revised Statutes of the United States.

See also the stipulation in case No. 1225, Thixton, Millett & Company vs. S. W. Stone, et al., at pages 32 and 33 of the response.

In this connection, we invite the court's careful consideration of the following, which we quote from the majority opinion in Bowman vs. Chicago, etc., Ry. Co., 125 U. S. 489:

“Doubtless the states have power to provide by law suitable measures to prevent the introduction into the states of articles of trade, which, on account of their existing condition, would bring in and spread disease, pestilence and death, such as rags or other substances infected with the germs of yellow fever or the virus of small-pox, or cattle or meat, or other provisions that are diseased, or decayed or otherwise, from their condition and quality unfit for human use or consumption. Such articles are not merchantable; they are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsically and directly the immediate sources and causes of destruction to human health

and life. The self-protecting power of each state, therefore, may be rightfully exerted against their introduction, and such exercises of power cannot be considered regulations of commerce prohibited by the constitution. Upon this point, the observations of Mr. Justice Catron in *The License Cases*, 5 How. 504, 599, are very much to the point. Speaking of the police power, as reserved to the states, and its relation to the power granted to Congress over commerce, he said: "The assumption is, that the police power was not touched by the constitution, but left to the states, and the constitution found it. This is admitted; and whenever a thing, from character or condition, is of a description to be regulated by that power in the state, then the regulation may be made by the state, and congress cannot interfere. *But this must always depend on facts subject to legal ascertainment, so that the injured may have redress.* And the fact must find its support in this: whether the prohibited article belongs to, and is subject to be regulated as part of, foreign commerce, or of commerce among the states. If, from its nature, it does not belong to commerce, or if its condition, from putrescence or other cause, is such, when it is about to enter the state, that it no longer belongs to commerce, or, in other words, is not a commercial article, then the state power may exclude its introduction. *And as an incident to this power, a state may use means to ascertain the fact.*"

(This quotation from the opinion of Mr. Justice Catron in the *License Cases* is requoted with approval in *In re Rahrer*, 140 U. S. 557).

We here find this honorable court quoting with approval the language used by Mr. Justice Catron in the *License Cases*, 5 How. 504, to the effect that if the subject matter of the transportation *does not belong to commerce*, or if its condition, from putrescence, or other cause, is such, when it is about to enter the state,

that it no longer belongs to commerce, or, in other words, is not a commercial article, then the state power may exclude its introduction, and immediately following this, it is expressly declared: "*And as an incident to this power, a state may use means to ascertain the fact.*"

It is the application of this doctrine that we are contending for in the case at bar. Petitioner contends that intoxicating liquor which is shipped from a place outside of petitioner's borders to a place within petitioner's borders in violation of any one or more of sections 238, 239 and 240, of the Federal Penal Code (Act Cong., March 4, 1909, 35 Stat. at L. 1136-7) "does not belong to commerce."

Petitioner further contends that intoxicating liquor shipped from a point outside of petitioner's borders to a place within petitioner's borders, and which said intoxicating liquor is "adulterated" or "misbranded," within the meaning of the Act of Congress of June 30, 1906, (34 Stat. at L. 768), commonly known as the Pure Food and Drug Act, "does not belong to commerce." In this connection, see the petition herein, pages 31 and 32, and particularly paragraphs (c) and (d), on page 32. The reason that such intoxicating liquor does not belong to commerce is because Congress by the Acts here referred to, has expressly outlawed it; and this, Congress, under the authority conferred by the Constitution of the United States to regulate commerce among the several states, has the power to do.

In *Bowman vs. Ry. Co.*, *supra*, this court has declared—and the statement is greatly emphasized by the fact that the language used in a former opinion is adopted and quoted literally—that "if, from its nature, it (the subject matter) does not belong to commerce, or if its condition, from putrescence or other cause, is

such, when it is about to enter the state, that it no longer belongs to commerce, or, in other words, is not a commercial article, *then the state power may exclude its introduction. And as an incident to this power, a state may use means to ascertain the fact.*"

Now all that the State of Oklahoma is undertaking to do by virtue of the provisions of her laws, which are set forth in the petition herein, is "*to ascertain the fact*" by means of an orderly judicial proceeding. In other words, the State of Oklahoma hearkens to the declarations of the Congress of the United States as to what shall constitute legitimate commerce in intoxicating liquors. Congress, having declared that there shall be no interstate commerce in intoxicating liquors which have been "adulterated" or "misbranded," within the meaning of the Pure Food and Drug Act, the State of Oklahoma accepts such declaration on the part of Congress as conclusive, and refuses to longer recognize as interstate commerce any intoxicating liquors which have been so "adulterated" or "misbranded." The State of Oklahoma accepts as conclusive the statement of this Honorable Court that the State power of Oklahoma may exclude the introduction into its territory of any commodity that has been thus outlawed by act of Congress, and "*as an incident to this power,*" the State of Oklahoma claims the right to "*use means to ascertain the fact.*"

In this contention we believe we are supported by all the decisions of this Honorable Court, wherein the question has been considered. Indeed, we believe that several of the decisions of this court which have never been overruled or modified, go even further, but none of them fail to go fully thus far. It therefore follows that the orders of injunction herein complained of by the State of Oklahoma are void, in that

they are an attempt on the part of an inferior Federal Court to deprive the State of Oklahoma of *the use of means*, viz: a judicial proceeding, to ascertain facts pertaining to the status of interstate shipments of intoxicating liquors for the purpose of determining whether or not, by virtue of certain Acts of Congress, said shipments of intoxicating liquors are entitled to any rights under the commerce clause of the Constitution of the United States.

For the reasons hereinabove stated and upon the authorities cited, together with the argument presented in our original brief, we respectfully submit that the writ of prohibition should issue in each case as prayed for by the petitioner, the State of Oklahoma.

FRED S. CALDWELL,
Attorney for the State of Oklahoma.

J. W. BAILEY,
Of Counsel.

IN THE
SUPREME COURT
OF THE
UNITED STATES

THE STATE OF OKLAHOMA, One of
the United States of America, by
Charles N. Haskell, Governor and Su-
preme Executive Officer thereof,
Petitioner.

VS.

THE CIRCUIT COURT OF THE UNI-
TED STATES FOR THE EASTERN
DISTRICT OF OKLAHOMA and Ralph
E. Campbell, the District Judge of said
District, sitting as Judge of Said Circuit
Court,

Respondents.

No. 13 Original

THE STATE OF OKLAHOMA, One of
the United States of America, by
Charles N. Haskell, Governor and Su-
preme Executive Officer thereof,
Petitioner.

VS.

THE CIRCUIT COURT OF THE UNI-
TED STATES FOR THE WESTERN
DISTRICT OF OKLAHOMA and John
H. Cotteral, the District Judge of said
District, sitting as Judge of said Circuit
Court,

Respondents.

No. 14 Original

PETITIONER'S BRIEF.

STATEMENT.

The manner in which the State of Oklahoma proceeds through its own courts to have judicially determined the legal status of any particular quantity of intoxicating liquor is fully stated in division V. of the petition.

ARGUMENT.

I.

THE INJUNCTION SUITS COMPLAINED OF ARE, IN EFFECT, DIRECTED AGAINST THE STATE OF OKLAHOMA, AND THEREFORE, ARE BARRED BY THE 11TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The effect of the injunctions complained of is to prohibit the State of Oklahoma, by means of directing and controlling the acts of its public officers, from invoking the judicial power of its courts for the purpose of inquiring into and judicially determining the status of any particular quantity of intoxicating liquor brought into the State through interstate commerce, prior to the time the police power of the state attaches thereto, notwithstanding the fact that there may be probable cause for believing said liquors have already arrived within the state within the meaning of the Wilson Act, as construed by this Honorable Court, and that the police power of the state has therefore attached; and notwithstanding the fact that there may be probable cause for believing that said liquors have been shipped into the state in violation of Section 3449 of the Revised Statutes of the United States or in violation of Sections 238, 239 or 240, of the Federal Penal Code, (Act of Congress of March the 4th, 1909, 35 Stat. L. 1136-7), or that said liquors are "adulterated" or "misbranded" within the

meaning of the Act of Congress of June 30th, 1906, (34 Stat. L. 768), commonly known as the Pure Food & Drug Act.

In thus attempting to control the acts of the State of Oklahoma by acting directly upon its public officers and controlling their official conduct, the injunction suits are, in effect, suits against the State of Oklahoma, and therefore, violative of the 11th. Amendment to the Constitution of the United States.

It is here conceded by the Petitioner that this would not be the case if the state laws under which the state officers were assuming to act were, in effect, no laws at all, by virtue of being unconstitutional and void. But the laws of Oklahoma here in question are valid laws, the constitutionality of which cannot be challenged with even a color of reason. They do not attempt to subject intoxicating liquors, which are the legitimate subject of interstate commerce, to the exercise of the police power of the State of Oklahoma, until such liquors have arrived within the state, within the meaning of the Wilson Act as construed by this Honorable Court.

At this point it is perhaps well to consider briefly the difference between "the police power" and "the judicial power" of a state. This Court has said of the police power:

"This power is and must be from its very nature, incapable of any very exact definition or limitation. Upon it depends the security of social order, the life and health of the citizen, and the comfort of their existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property." Slaughter House Cases, 83 U. S. (16 Wall.) 36, 62. 21 Law.

Ed. 394.

In *Munn v. Illinois*, 94 U. S. 113, 124, this Court said:

"While power does not exist with the whole people to control rights that are purely and exclusively private, government may require each citizen to so conduct himself, and so use his own property, as not unnecessarily to injure another."

The foregoing is quoted with approval by this Court, in *Mugler v. Kansas*, 123 U. S. 623, 660; 8 Sup. Ct. Rep. 273; 31 Law. Ed. 210; and thereupon the Court, speaking through Mr. Justice Harlan, continues with this language:

"But by whom or by what authority is it to be determined whether the manufacturer of particular articles of drink, either for general use or for the personal use of the manufacturer, will injuriously affect the public? Power to determine such questions, so as to bind all, must exist somewhere; else society will be at the mercy of the few, who, regarding only their own appetites or passions, may be willing to imperil the peace and security of the many, provided only they are permitted to do as they please. Under our system that power is lodged with the legislative branch of the government. It belongs to that department to exert what are known as the police powers of the state and to determine primarily what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety."

The foregoing apparently defines the "police power" as definitely as that subject will admit of definition.

The "judicial power" is well defined by the Supreme Court of New York, Appellate Division, Second Department, in the case of *In re, Walker*, 74, N. Y. Suppl. 94, 96, where it is said;

"The Constitution of the United States suggests the meaning of "judicial power" when, in article 3, section 1, it declares that the judicial power of the United States shall be vested in the supreme Court, and in such inferior courts as the congress may establish. "Judicial power" is well defined in the Century Dictionary as : "(a) The authority to determine rights of persons or property by arbitrating between adversaries in specific controversies, at the instance of a party thereto * * * * (c) A power conferred upon a public officer involving the exercise of judgment and discretion in the determination of questions of right in specific cases affecting the interests of persons or property, as distinguished from ministerial power, or authority to carry out the mandate of judicial power or of the law."

Now in order to know whether any particular quantity of intoxicating liquor shipped into the State of Oklahoma from places outside the state, has become subject to the exercise of the police power of the state, it is necessary to determine the exact status of such particular quantity of intoxicating liquor, in at least two respects. (a) Was said liquor, at the time it was shipped into the State of Oklahoma, a legitimate subject of interstate commerce, or did it fail to become such legitimate subject of interstate commerce by reason of having been shipped into the State of Oklahoma in violation of some Act of Congress? (b) If said particular quantity of intoxicating liquor has not been shipped into the State of Oklahoma in violation of any Act of Congress, and therefore, became and is a legitimate subject of interstate commerce, has its status as such interstate commerce ceased, by reason of delivery thereof having been made by the interstate carrier under the contract of interstate shipment to the consignee, at the point of destination?

State v. Intoxicating Liquors; 71 Atl. (Me.)
758.

Rhodes v. Iowa; 170 U. S. 412; 18 Sup. Ct. Rep. 676; 42 Law. Ed. 1096.

Vance v. Vandercook Co.; 170 U. S. 439; 18 Sup. Ct. Rep. 676; 42 Law. Ed. 1102.

American Express Co. v. Iowa; 196 U. S. 13; 25 Sup. Ct. Rep. 182; 49 Law. Ed. 417.

Pabst Brewing Company v. Crenshaw; 198 U. S. 17, 25 Sup. Ct. Rep. 552; 42 Law. Ed. 925.

Heyman v. So. Ry. Co., 203 U. S. 270; 27 Sup. Ct. Rep. 104; 51 Law. Ed. 178.

State v. 18 Casks of Beer, et al., (Okla.) 104 Pac. 1093.

Now obviously the proper and orderly method of determining the status of any particular quantity of intoxicating liquor found within the borders of the State of Oklahoma, as respects either or both of the conditions hereinabove suggested, is by invoking the judicial power of the State and having this question of the liquor's status—*the status of the res*—judicially determined. But by the injunction suits, about which the Petitioner in the cases at bar is complaining, it is sought to prohibit the exercise of the judicial power of the State of Oklahoma in such instances, and an inferior Federal Court has seen fit to undertake to prevent, by Writ of Injunction, such exercise of the judicial power of the State of Oklahoma, on the ground that the same is being wrongfully invoked by the State itself. The police power is not involved at all. There is no dispute touching the operations or limitations of the police power. But an inferior Federal Court has seen fit to take exception to the judicial pow-

er of a State being invoked in such instances, for the purpose of judicially determining, according to due process of law, and after a prima facie showing of the existence of probable cause, whether a particular quantity of intoxicating liquor brought into the State from other States, is not a legitimate subject of interstate commerce, by reason of the fact that it was shipped into the state from some other state in violation of some Act of Congress; or whether such particular quantity of intoxicating liquor has not, in fact, ceased to be interstate commerce by reason of having been delivered by the interstate carrier under the contract of interstate shipment to the consignee at the point of destination. In order to accomplish its purpose in the premises, the inferior Federal Court has enjoined the executive officers of the State Courts, the Sheriffs throughout the several counties, and the Constables throughout the several townships, from serving or executing the process of said State Courts and has enjoined the State's Prosecuting Attorneys from causing to be brought and from prosecuting, such actions in rem. Has a Circuit Court of the United States power to do this? This depends upon the constitutionality of the State enactment.

If the acts of the state officers thus enjoined are unauthorized by any valid state law, then the acts done or performed by them in execution of such void state enactment constitute them mere trespassers or tortfeasors upon or against the vested property rights of the complainant in the equity suit in which the jurisdiction of a Circuit Court of the United States is invoked; and such Circuit Court of the United States has the power, and it is its duty, to protect such complainant's vested property rights against such wrongful

acts and trespasses. On the contrary, if the acts of the state officers which are thus sought to be enjoined are supported by a valid state law, then such officers are the agents and representatives of the state and the acts done and performed by them in the execution and enforcement of such valid state law become and are the acts of the state; and, therefore, a suit in equity to enjoin the performance of such acts is, in effect, a suit against the State, and hence barred by the 11th Amendment to the Constitution of the United States. This is the test established by a long line of decisions of this Court, beginning with *Osborn v. United States Bank*, 9 Wheat, 738, 846, and ending with *Ex parte, Young*, 209 U. S. 123, 142. The language in the opinion of the leading case of *Osborn v. United States Bank*, supra, to the effect that whether or not a state is a party defendant is to be determined upon the face of the record, was shortly modified and the rule declared to be that whether a state is the actual party defendant in the sense of the prohibition of the Constitution, must be determined by a consideration of the nature of the case as presented on the whole record and not merely by the parties as they appear upon the face of the record. With this modification it is safe to say that the authority of the leading case has never been over-ruled.

It will not be attempted here to review every case in which this question, in one form or another, has been considered and passed upon by this Court, but an examination of a few of the principal cases will be made for the purpose of fortifying the rule as hereinabove announced for the determination of the question as to whether or not a particular action is, in effect, a suit against a state within the meaning of the 11th Amendment.

In *Osborn v. United States Bank*, *supra*, 853, it is said:

"The responsibility of the officers of the State for the money taken out of the Bank, was admitted, and it was acknowledged that this responsibility might be enforced by the proper action."

In *Cunningham v. Macon & Brunswick R. R. Co.*, 109 U. S. 446, 452, it is said:

"2. Another class of cases is where an individual is sued in tort for some act injurious to another in regard to person or property, to which his defence is that he has acted under the orders of the government.

In these cases he is not sued as, or because he the officer of the government but as an individual and the court is not ousted of jurisdiction because he *asserts* authority as such officer. To make out his defence he must show that his authority was sufficient in law to protect him. See *Mitchell v. Harmoy*, 13 How. 115; *Bates v. Clark*, 95 U. S. 204; *Meigs v. McClung*, 9 Cranch, 11; *Wilcox v. Jackson*, 13 Pet. 498; *Brown v. Huger*, 21 How. 305; *Grisar v. McDowell*, 6 Wall. 363."

In *Poindexter v. Greenhow*, 114 U. S. 270, paragraph 6 of the syllabi reads:

"Such a defendant, sued as a wrong doer, who seeks to substitute the State in his place, or to justify by the authority of the State, or to defend on the ground that the State has adopted his act and exonerated him, cannot rest on the bare assertion of his defence, but is bound to establish it; and, as the State is a political corporate body, which can act only through agents, and command only by laws, in order to complete his defence, he must produce a valid law of the State, which constitutes his commission as its

agent, and a warrant for his act."

In the body of the opinion, at the bottom of page 282, the Court say:

"The case, then, of the plaintiff below is reduced to this. He had paid the taxes demanded of him by a lawful tender. The defendant had no authority of law thereafter to attempt to enforce other payment by seizing his property. In doing this, he ceased to be an officer of the law, and became a private wrong doer. It is the simple case in which the defendant, a natural private person, has unlawfully, with force and arms, seized, taken and detained the personal property of another."

In *In re Ayers*, 123 U. S. 443, 498--500, the Court say:

"It is, however, insisted upon in argument that it is within the jurisdiction of the Circuit Court of the United States to restrain by injunction officers of the States from executing the provisions of state statutes, void by reason of repugnancy to the Constitution of the United States; that there are many precedents in which that jurisdiction has been exercised under the sanction of this court; and that the present case is covered by their authority.

The principal authority relied upon to maintain this proposition is the judgment of this court in the case of *Osborne v. Bank of the United States*, 9 Wheat. 738. As strengthening the argument based upon that decision, our attention is called by counsel to a feature of the case which it is said does not clearly appear from the official report by Mr. Wheaton. The original record of the case shows that the bill, after setting out the substance of the act of the Legislature of Ohio complained of, alleged that Osborn, the Auditor of the State, and the officer upon whom the execution of the statute of the State was enjoined, "daily gives

it out in speeches that he will execute and enforce the provisions of the said act of Ohio against your orators." And it is part of the prayer of the bill to stay and enjoin said Ralph Osborn, auditor as aforesaid, and all others whom it may concern in any wise, from proceeding against your orators under and in virtue of the act of Ohio aforesaid, or any section, part, or provision thereof." It also appears that it was a part of the decree of the Circuit Court from which the appeal was prosecuted, "that the defendants and each of them be perpetually enjoined from proceeding to collect any tax, which has accrued or may hereafter accrue, from the complainants under the act of the General Assembly of Ohio in the bill and proceedings mentioned." But the act of the Legislature of Ohio declared to be unconstitutional and void in that case had for its sole purpose the levy and collection of an annual tax of \$50,000 upon each office of discount and deposit of the Bank of the United States within that State, to be collected, in case of refusal to pay, by the Auditor of State by a levy upon the money, bank notes, or other goods and chattels, the property of the bank, to seize which it was made lawful, under the warrant of the auditor, for the person to whom it was directed, to enter the bank for the purpose of finding and seizing property to satisfy the same.

The wrong complained of and sought to be prevented by the injunction prayed for was this threatened seizure of the property of the bank. An actual seizure thereof in violation of the injunction, was treated as a contempt of court, for which the parties were attached, and the final decree of the Circuit Court restored the property taken to the possession of the complainant. In disposing of the case in this court, the opinion of Chief Justice Marshall concludes as follows, 9 Wheat. 871: "We think then that there is no error in the decree of the Circuit Court for the District of Ohio, so far as it directs restitution of

the specific sum of \$98,000, which was taken out of the bank unlawfully and was in the possession of the defendant Samuel Sullivan, when the injunction was awarded in September, 1820, to restrain him from paying it away, or in any manner using it, and so far as it directs the payment of the remaining sum of \$2000 by the defendants Ralph Osborn and John L. Harper; but that the same is erroneous so far as respects the interest on the coin, part of the said \$98,000, it being the opinion of this court that while the parties were restrained by the authority of the Circuit Court from using it they ought not to be charged with interest. The decree of the Circuit Court for the District of Ohio is affirmed as to the said sums of \$98,000 and \$2000, and reversed as to the residue."

The mandate from this court was in accordance with the terms of this judgment.

There is nothing, therefore, in the judgment in that cause as finally defined, which extends its authority beyond the prevention and restraint of the specific act done in pursuance of the unconstitutional statute of Ohio, and in violation of the act of Congress chartering the bank, which consisted of the unlawful seizure and detention of its property. *It was conceded throughout that case in the argument at the bar and in the opinion of the court, that an action at law would lie, either of trespass or detinue, against the defendants as individual trespassers guilty of a wrong in taking the property of the complainant illegally vainly seeking to defend themselves under the authority of a void act of the General Assembly of Ohio.* One of the principal questions in the case was whether equity had jurisdiction to restrain the commission of such a mere trespass, a jurisdiction which was upheld upon the circumstances and nature of the case, and which has been repeatedly exercised since. But the very ground on which it was adjudged not to be a suit against the State, and not to be one in which the State was a nec-

essary party, was that the defendants personally and individually were wrongdoers, against whom the complainants had a clear right of action for the recovery of the property taken, or its value, and that therefore it was a case in which no other parties were necessary. The right asserted and the relief asked were against the defendants as individuals. They sought to protect themselves against personal liability by their official character as representatives of the State. This they were not permitted to do, because the authority under which they professed to act was void."

In *Pennoyer v. McConnaughy*, 140 U. S. 1, 9—10, the Court say:

"It is well settled that no action can be maintained in any Federal Court by the citizens of one of the States against a State, without its consent, even though the sole object of such suit be to bring the State within the operation of the constitutional provision which provides that "no State shall pass any law impairing the obligation of contracts." This immunity of a State from suit is absolute and unqualified, and the constitutional provision securing it is not to be so construed as to place the State within the reach of the process of the court. Accordingly, it is equally well settled that a suit against the officers of a State, to compel them to do the acts which constitute a performance by it of its contracts, is, in effect, a suit against the State itself.

In the application of this latter principle two classes of cases have appeared in the decisions of this court, and it is in determining to which class a particular case belongs that differing views have been presented.

The first class is where the suit is brought against the officers of the State, as representing the State's action and liability, thus making it,

though not a party to the record, the real party against which the judgment will so operate as to compel it to specifically perform its contracts. In *re* Ayers, 123 U. S. 443; *Louisiana v. Jumel*, 107 U. S. 711; *Antoni v. Greenhow*, 107 U. S. 769; *Cunningham v. Macon & Brunswick Railroad*, 109 U. S. 446; *Hagood v. Southern*, 117 U. S. 52.

The other class is where a suit is brought against defendants who, claiming to act as officers of the State, and under the color of an unconstitutional statute, commit acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State. Such suit, whether brought to recover money or property in the hands of such defendants, unlawfully taken by them in behalf of the State, or for compensation in damages, or, in a proper case where the remedy at law is inadequate for an injunction to prevent such wrong and injury, or for a mandamus, in a like case, to enforce upon the defendant the performance of a plain, legal duty, purely ministerial—is not, within the meaning of the Eleventh Amendment, an action against the State. *Osborn v. Bank of the United States*, 9 Wheat. 738; *Davis v. Gray*, 16 Wall. 203; *Tomilson v. Branch*, 15 Wall. 460; *Litchfield v. Webster County*, 101 U. S. 773; *Allen v. Baltimore & Ohio Railroad*, 114 U. S. 311; *Board of Liquidation v. McComb*, 92 U. S. 531; *Poindexter v. Greenhow*, 114 U. S. 270."

The foregoing from *Pennoyer v. McConnaughy* is quoted with approval and re-affirmed, in *Tindal v. Wesley*, 167 U. S. 204, 219-20, where the Court speaking through Mr. Justice Harlan, say:

"The cases in this court in which it has been necessary to consider the meaning and scope of the Eleventh Amendment are quite numerous. In *Pennoyer v. McConnaughy*, 140 U. S. 1, 10, the opinion in which case was delivered by Mr. Jus-

tice Lamar, the cases previously decided were examined, and were held to belong to two classes. The first class, he said, "is where the suit is brought against the officers of the State, as representing the State's action and liability, thus making it, though not a party to the record, the real party against which the judgment will so operate as to compel *it to specifically perform its contracts*"—citing *In re Ayers*, 123 U. S. 443; *Louisiana v. Jumel*, 107 U. S. 711; *Antoni v. Greenhow*, 107 U. S. 769; *Cunningham v. Macon & Brunswick Railroad*, 109 U. S. 446, and *Hagood v. Southern*, 117 U. S. 52. The other class, the court said, "is where a suit is brought against defendants, who, claiming to act as officers of the State and under the color of an unconstitutional statute, commit acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State. Such suit, whether brought to recover money or property in the hands of such defendants, unlawfully taken by them in behalf of the State, or for compensation in damages, or, in a proper case where the remedy at law is inadequate, for an injunction to prevent such wrong and injury, or for a mandamus, in a like case, to enforce upon the defendant the performance of a plain, legal duty, purely ministerial—is not, within the meaning of the Eleventh Amendment, an action against the State"—citing *Osborn v. United States Bank*, 9 Wheat. 738; *Davis v. Gray*, 16 Wall. 203; *Tomlinson v. Branch*, 15 Wall. 460; *Litchfield v. Webster County*, 101 U. S. 773; *Allen v. Baltimore & Ohio Railroad*, 114 U. S. 311; *Board of Liquidation v. McComb*, 92 U. S. 531; *Poindexter v. Greenhow*, 114 U. S. 270."

In *Fitts v. McGhee*, 172 U. S. 516, 528-29, the principle here contended for it clearly recognized and stated in the opinion thus:

"If these principles be applied in the present case there is no escape from the conclusion that,

although the State of Alabama was dismissed as a party defendant, this suit against its officers is really one against the State. As a State can act only by its officers, an order restraining those officers from taking any steps, by means of judicial proceedings, in execution of the statute of February 9, 1895, is one which restrains the State itself, and the suit is consequently as much against the State as if the State were named as a party defendant on the record. If the individual defendants held possession or were about to take possession of, or to commit any trespass upon, any property belonging to or under the control of the plaintiffs, in violation of the latter's constitutional rights, they could not resist the judicial determination, in a suit against them, of the question of the right to such possession by simply asserting that they held or were entitled to hold the property in their capacity as officers of the State. In the case supposed, they would be compelled to make good the State's claim to the property, and could not shield themselves against suit because of their official character. *Tindal v. Wesley*, 167 U. S. 204, 222. No such case is before us."

In *Prout v. Starr*, 188 U. S. 537, 542-43, Mr. Justice Shiras, who delivered the opinion of the Court, quotes from *Smyth v. Ames*, as follows:

"Within the meaning of the Eleventh Amendment of the Constitution, these suits are not against the State, but against certain individuals charged with the administration of a state enactment, which, it is alleged, cannot be enforced without violating the constitutional rights of the plaintiffs. It is the settled doctrine of this court that a suit against individuals, for the purpose of preventing them as officers of a State from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the State within the meaning of that amendment. *Pennoyer v. McConnaughy*, 140 U.

S. 1, 10; *In re Tyler*, 149 U. S. 164, 190; *Scott v. Donald*, 165 U. S. 58, 68; *Tindal v. Wesley*, 167 U. S. 204, 220."

In *Davis & Farnum Mfg. Co. v. Los Angeles*, 189 U. S. 207, 217-18, the principle is discussed by the Court as follows:

"The general rule that a Circuit Court of the United States, sitting as a court of equity, cannot stay by injunction proceedings pending in a state court to enforce the criminal laws of such State, was applied in *Harkrader v. Wadley*, 172 U. S. 148, to a case where the plaintiff sought to enjoin proceedings against him for the embezzlement of the assets of a bank; and in *Fitts v. McGhee*, 172 U. S. 516, to a suit brought by the receiver of a railroad against the attorney general of the State to restrain him from instituting or prosecuting criminal proceedings to enforce against the plaintiff the provisions of a state law reducing the tolls, which had been exacted of the public by the railroad, of which the plaintiff was receiver. This was held to be in reality a suit against the State to enjoin the institution of criminal proceedings, and hence within the general rule. See also *Prout v. Starr*, 188 U. S. 537.

Plaintiff seeks to maintain its bill under the exception above noted, wherein, in a few cases, an injunction has been allowed to issue to restrain an invasion of rights of property by the enforcement of an unconstitutional law, where such enforcement would result in irreparable damages to the plaintiff. It cites in that regard the case of *Reagan v. Farmers Loan & Trust Co.*, 154 U. S. 362, in which, under a law of Texas giving express authority to a railroad company or other party in interest to bring suit against the railroad commissioners of that State, a bill was sustained against such commission to restrain the enforcement of unreasonable and unjust rates, and in the opinion a few instances were cited where bills were sustained against officers

of the State, who, under color of an unconstitutional statute, were committing acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State. It would seem that, if there were jurisdiction in a court of equity to enjoin the invasion of property rights through the instrumentality of an unconstitutional law, that jurisdiction would not be ousted by the fact that the State had chosen to assert its power to enforce such law by indictment or other criminal proceedings. *Springhead Spinning Co. v. Riley*, L. R. 6 Eq. 551, 558."

In *Dobbins v. Los Angeles*, 195 U. S. 223, 241, the Court, speaking through Mr. Justice Day, say:

"It is well settled that where property rights will be destroyed unlawful interference by criminal proceedings under a void law or ordinance may be reached and controlled by a decree of a court of equity. *Davis & Farnum Mfg. Co. v. Los Angeles*, 189 U. S. 207, 218, and cases therein cited."

In the recent case of *Ex parte Young*, 209 U. S. 123, 145, the Court, speaking through Mr. Justice Peckham, first addresses itself to the constitutionality or unconstitutionality of the legislative acts of the State of Minnesota, upon which the Attorney-General of Minnesota stood for his authority to act on behalf of the State. The opinion reads:

"Coming to the inquiry regarding the alleged invalidity of these acts, we take up the contention that they are invalid on their face on account of the penalties. For disobedience to the freight act the officers, directors, agents and employes of the company are made guilty of a misdemeanor, and upon conviction each may be punished by imprisonment in the county jail for a period not exceeding ninety days. Each violation would be a separate offence, and therefore, might result in imprisonment of the various agents of the com-

pany who would dare disobey for a term of ninety days each for each offense. Disobedience to the passenger rate act renders the party guilty of a felony and subject to a fine not exceeding five thousand dollars or imprisonment in the state prison for a period not exceeding five years, or both fine and imprisonment. The sale of each ticket above the price permitted by the act would be a violation thereof. It would be difficult, if not impossible, for the company to obtain officers, agents or employes willing to carry on its affairs except in obedience to the act and orders in question. The company itself would also, in case of disobedience, be liable to the immense fines provided for in violating orders of the Commission. The company, in order to test the validity of the acts, must find some agent or employe to disobey them at the risk stated. The necessary effect and result of such legislation must be to preclude a resort to the courts (either state or Federal) for the purpose of testing its validity. The officers and employes could not be expected to disobey any of the provisions of the acts or orders at the risk of such fines and penalties being imposed upon them, in case the court should decide that the law was valid. The result would be a denial of any hearing to the company. The observations upon a similar question made by Mr. Justice Brewer in *Cotting v. Kansas City Stock Yards Company*, 183 U. S. 79, 99, 100, 102, are very apt. At page 100 he stated: "Do the laws secure to an individual an equal protection when he is allowed to come into court and make his claim or defense subject to the condition that upon a failure to make good that claim or defense the penalty for such failure either appropriates all his property or subjects him to extravagant and unreasonable loss?" Again, at page 102, he says: "it is doubtless true that the state may impose penalties, such as will tend to compel obedience to its mandates by all individuals or corporations, and if extreme and cumulative penalties are imposed only after there has been a final determination of the validity of the statute,

the question would be very different from that here presented. But when the legislature, in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws." The question was not decided in that case, as it went off on another ground. We have the same question now before us, only the penalties are more severe in the way of fines, to which is added, in the case of officers, agents or employes of the company, the risk of imprisonment for years as a common felon. See also *Mercantile Trust Co. v. Texas & Ry. Co.*, 51 Fed. Rep. 529, 543; *Louisville &c. R. R. Co., v. McCord*, 103 Fed. Rep. 216. 223; *Consolidated Gas Co. v. Mayer*, 146 Fed. Rep. 150, 153. In *McGahey v. Virginia*, 135 U. S. 662, 694, it was held that to provide a different remedy to enforce a contract which is unreasonable, and which imposes conditions not existing when the contract was made, was to offer no remedy, and when the remedy is so onerous and impracticable as to substantially give none at all the law is invalid, although what is termed a remedy is in fact given. See also *Bronson v. Kinzie*, How. 311, 317; *Siebert v. Lewis*, 122 U. S. 284. If the law be such as to make the decision of the legislature or of a commission conclusive as to the sufficiency of the rates, this court has held such a law to be unconstitutional. *Chicago &c. Railway Co. v. Minnesota*, 134 U. S. 418. A law which indirectly accomplishes a like result by imposing such conditions upon the right to appeal for judicial relief as works an abandonment of the right rather than face the conditions upon which it is offered or may be obtained, is also unconstitutional. It may therefore be said that when the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the

result is the same as if the law in terms prohibited the company from seeking judicial construction of laws which deeply affect its rights."

Farther on at Page 148, the Court announces its conclusion as follows:

"We hold, therefore, that the provisions of the acts relating to the enforcement of the rates, either for freight or passenger, by imposing such enormous fines and possible imprisonment as a result of an unsuccessful effort to test the validity of the laws themselves, are unconstitutional on their face, without regard to the question of the insufficiency of those rates. We also hold that the Circuit Court had jurisdiction under the cases already cited (and it was therefore its duty) to inquire whether the rates permitted by these acts or orders were too low and therefore confiscatory, and if so held that the court then had jurisdiction to permanently enjoin the railroad company from putting them in force, and that it also had power while the inquiry was pending, to grant a temporary injunction to the same effect."

Having thus determined the unconstitutionality of the state law, the Court next proceeds, at page 149, of the opinion, to a statement of the proposition which remains to be decided, and such statement is as follows:

"We have, therefore, upon this record the case of an unconstitutional act of the state legislature and an intention by the Attorney General of the State to endeavor to enforce its provisions, to the injury of the company, in compelling it, at great expense, to defend legal proceedings of a complicated and unusual character, and involving questions of vast importance to all employees and officers of the company, as well as to the company itself. The question that arises is whether there is a remedy that the parties interested may resort to, by going into a Federal court of equity, in a case involving a violation of the Federal Consti-

tution, and obtaining a judicial investigation of the problem, and pending its solution obtain freedom from suits, civil or criminal, by a temporary injunction, and if the question be finally decided favorably to the contention of the company, a permanent injunction restraining all such actions or proceedings."

From the foregoing it certainly appears clear, beyond question, that this Court held it to be necessary in order to remove the case from the operation of the Eleventh Amendment to first determine that the state enactment upon the authority of which the state officers stood, was unconstitutional. If this Court had reached a contrary conclusion touching the constitutionality of the legislative act of the State of Minnesota, it would have been compelled to recognize the applicability of the Eleventh Amendment and the consequent lack of jurisdiction in the Circuit Court of the United States.

At page 150 of the opinion, the case of *Davis v. Gray*, 16 Wall . 203,220, is commented upon as follows:

"*Davis v. Gray*, 16 Wall. 203, 220, reiterates the rule of *Osborn v. United States Bank*, so far as concerns the right to enjoin a state officer from executing a state law in conflict with the Constitution or a statute of the United States, when such execution will violate the rights of the complainant."

At page 152 of the opinion, *Pennoyer v. McConaughy*, 140 U. S. 1, 9, is commented upon as follows:

"In *Pennoyer v. McConaughy*, 140 U. S. 1, 9, a suit against land commissioners of the State was said not to be against the State, although the complainants sought to restrain the defendants, officials of the State, from violating, under an unconstitutional act, the complainants contract with the State, and thereby working irrepar-

able damage to the property rights of the complainants. *Osborn v. United States Bank*, supra, was cited, and it was stated: "But the general doctrine of *Osborn v. Bank of the United States*, that the Circuit Courts of the United States will restrain a state officer from executing an unconstitutional statute of the State, when to execute it would violate rights and privileges of the complainant which had been guaranteed by the Constitution, and would work irreparable damage and injury to him, has never been departed from. The same principle is decided in *Scott v. Donald*, 165 U. S. 58, 67."

Farther on, at page 155-56, of the opinion, the Court announces its conclusion of law drawn from numerous cases cited as follows:

"The various authorities we have referred to furnish ample justification for the assertion that individuals, who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action."

In this case it was contended by the petitioner that the only proceeding which the Attorney General could take to enforce the statute, so far as his office was concerned, was one by mandamus which would be commenced by the State in its sovereign and governmental character and that the right to bring such action is a necessary attribute of a sovereign government. It was further urged that the complainants did not complain and cared nothing about any action which the petitioner (Mr. Young) might take or bring as an ordinary individual, but that he was complained of as an officer to

whose discretion was confided the use of the name of the State of Minnesota, so far as litigation was concerned, and that when or how he should use such authority was a matter resting in his discretion and could not be controlled by any court. This contention is answered by the court, at pages 159-60 of the opinion, as follows:

"The general discretion regarding the enforcement of the laws when and as he deems appropriate is not interfered with by an injunction which restrains the state officer from taking any steps towards the enforcement of an unconstitutional enactment to the injury of the complainant. In such case no affirmative action of any nature is directed, and the officer is simply prohibited from doing an act which he had no legal right to do. An injunction to prevent him from doing that which he has no legal right to do is not an interference with the discretion of an officer."

"The answer to all this is the same as made in every case where an official claims to be acting under the authority of the State. The act to be enforced is alleged to be unconstitutional, and if it be so, the use of the name of the State to enforce an unconstitutional act to the injury of complainants is a proceeding without the authority of and one which does not affect the State in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official in attempting by the use of the name of the State to enforce a legislative enactment which is void because unconstitutional. If the act which the state Attorney General seeks to enforce be a violation of the Federal Constitution, the officer in proceeding under such enactment comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his office or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from re-

sponsibility to the supreme authority of the United States. See *In re Ayers*, supra, page 507. It would be an injury to complainant to harass it with a multiplicity of suits or litigation generally in an endeavor to enforce penalties under an unconstitutional enactment, and to prevent it ought to be within the jurisdiction of a court of equity. If the question of unconstitutionality with reference, at least, to the Federal Constitution be first raised in a Federal court, that court as we think is shown by the authorities cited hereafter, has the right to decide it to the exclusion of all other courts."

At page 163 of the opinion, the important distinction between enjoining the exercise of the judicial power of a State, and an exercise of assumed executive power under an unconstitutional State enactment, is thus clearly recognized and stated:

"It is proper to add that the right to enjoin an individual, even though a state official, from commencing suits under circumstances already stated, does not include the power to restrain a court from acting in any case brought before it, either of a civil or criminal nature, nor does it include power to prevent any investigation or action by grand jury. The latter body is part of the machinery of a criminal court and an injunction against a state court would be a violation of the whole scheme of our Government. If an injunction against an individual is disobeyed and he commences proceedings before a grand jury or in a court, such disobedience is personal only, and the court or jury can proceed without incurring any penalty on that account.

The difference between the power to enjoin an individual from doing certain things, and the power to enjoin courts from proceeding in their own way to exercise jurisdiction is plain, and no power to do the latter exists because of a power to do the former."

From the foregoing authorities it follows that where an individual is sued in tort, for some act injurious to another in regard to person or property, or where such individual is proceeded against by bill in equity to enjoin a trespass upon irreparable injury to, the property of another, it is not sufficient defense for him to allege that he is acting officially as a state officer. To make out his defense he must go further and show that his authority is sufficient in law to protect him. In other words, as stated by the court in *Cunningham v. Macon & Brunswick R. R. Co.*, supra, the court is not ousted of jurisdiction merely because the person sued *asserts* authority as a state officer.

But if the person who is thus sued is able to show authority for the acts complained of by virtue of a valid state law, then he has made out his defence by showing that his authority was sufficient in law to protect him and that the act complained of is not, in legal contemplation, his individual act, but is the act of the state through him as its official representative. The act having been thus shown to be the act of the state, the case is immediately thereby brought within the purview of the Eleventh Amendment and the Federal Court is thereupon ousted of jurisdiction.

Accordingly, it becomes necessary for the Petitioner in the cases at bar to show a valid law authorizing the acts on the part of its public officers, which said acts the Respondents have undertaken to enjoin. Petitioner has done this in divisions III. and IV. of its Petition.

Several sections of Petitioner's laws are set out in said divisions III. and IV. of said Petitions, but it is only necessary to make particular reference to Sections 4180, 4184 and 4185, of the 1909 Compiled Laws of Oklahoma, together with the decisions of the Sup-

reme Court of Oklahoma in the case of State, ex rel Caldwell, vs. Hooker, County Judge, 98 Pac. 964, and the decision of said Court in the case of State vs 18 Casks of Beer, et al., 104 Pac. 1093. As stated in the forepart of this brief the constitutionality of these laws of the State of Oklahoma cannot be challenged with even a color of reason, and therefore, it is not deemed necessary to offer argument in support of their validity beyond that so ably stated in said two decisions of the Supreme Court of Oklahoma; and we therefore, pass on to a consideration of the position,, from a legal standpoint, of the executive officer of an Oklahoma Court, who executes a search and seizure warrant issued pursuant to said Sections 4184 and 4185, of the 1909 Compiled Laws of Oklahoma, and regular on its face, in a case where, upon the hearing, it develops that the liquors seized were, at the time the seizure was made, interstate commerce and, therefore, not being subject to the exercise of the police power of the State, are ordered returned to the custody of the person from whom taken. Is such officer, who so executes such warrant, a trespasser because of the fact that the liquors seized by him under such search and seizure warrant were, in fact, at the time of the seizure, interstate commerce, and, therefore, not subject to the exercise of the police power of the State? This is logically a part of the first proposition argued herein, but it is believed that the same can be more clearly presented if considered as a sepearte proposition, which may be stated as follows:

II.

ALL SEARCH AND SEIZURE PROCEEDINGS
PROSECUTED BY THE STATE OF OKLAHOMA
UNDER SECTIONS 4184 AND 4185 OF THE 1909

COMPILED LAWS OF OKLAHOMA, ARE ACTIONS IN REM, BROUGHT UNDER A VALID STATE LAW, IN COURTS OF COMPETENT JURISDICTION, AND THEREFORE, THE SEARCH AND SEIZURE WARRANTS ISSUED THEREIN ARE IN NO SENSE VOID, AND FULLY PROTECT THE OFFICER OR OFFICERS EXECUTING THE SAME.

The rule of law is that an officer charged with the execution of a search warrant is only obliged to notice defects or irregularities upon its face, and if it be legal in form and issued by a magistrate or out of a court having jurisdiction of the subject matter, pursuant to a valid state law, he has sufficient authority for its service, does not become a trespasser or wrong doer and is fully protected against any civil liability by reason of having executed such warrant; provided, of course, he does not exceed, abandon or abuse the process. This statement of the law is fully supported by the authorities.

In *Dwinnels vs. Boynton*, 3 Allen, (Mass.)310, it is said:

"A search warrant issued by a competent tribunal will protect an officer who acts under it, although founded on an insufficient complaint.

An officer may lawfully serve a search warrant which refers to an annexed complaint, on which it is founded, for a description of the place to be searched and the property to be searched for."

In *Humes v. Taber, et al.*, 1 R. I. 464, the Court Say:

"An officer, charged with the execution of a search warrant, is only obliged to notice defects

and irregularities upon its face, and if it be legal in form and issued from a magistrate having jurisdiction over the subject matter, he has sufficient authority for its service, although the complaint be defective."

In *Walls v. Farnham*, 2 Hub. (Me) 325, it is held:

"A complaint and warrant, in due form, are a sufficient justification for an officer and his aids for seizing spirituous liquors under the statute, 1851, C. 211."

In *Sanford v. Nichols*, (Mass.) 7 Am. Dec. 152, the opinion of the Court is as follows:

"By Court, Parker, C. J. We think that the defendants could have justified the acts complained of by showing a regular warrant from a magistrate having jurisdiction over the subject, without showing that it was founded upon a complaint under oath. It will not do to require of executive officers, before they shall be held to obey precepts directed to them, that they shall have evidence of the regularity of the proceedings of the tribunal which commands the duty. Such a principle would put a stop to the execution of legal process, as officers so situated would be necessarily obliged to judge for themselves, and would often judge wrong as to the lawfulness of the authority under which they are required to act. It is a general and known principle, that executive officers obliged by law to serve legal writs and processes, are protected in the rightful discharge of their duty, if those precepts are sufficient in point of form, and issue from a court or magistrate having jurisdiction of the subject matter. If such magistrate shall proceed unlawfully in issuing the process, he, and not the executive officer will be liable for the injury consequent upon such act."

In *Small v. Orne*, 79 Me. 81, the Court say:

"The warrant commanded the defendant to enter the saloon, outbuildings, and appurtenances thereof occupied by the 'plaintiff' and situated on the west side of Main Street, also the cellar under the saloon and rooms above, in said Rockland,' and therein search for intoxicating liquors.

No question is made but that the designation of the place to be searched is sufficiently definite to meet the requirements of the constitution in that respect. *State v. Burk*, 66 Maine, 127.

All the rooms above the saloon, with the exception of one used as a restaurant, were occupied by the plaintiff and his family as the place of their residence and dwelling house. The objection raised against the warrant is, that the officer was directed to search the plaintiff's dwelling house, and that the warrant was void because it contained no allegation that the dwelling house, or some part of it, was used as an inn or shop, or for the purposes of traffic, nor that the magistrate issuing the warrant was satisfied by evidence presented to him, that intoxicating liquors were kept in such house or its appurtenances, as the statute requires. *R. S. c. 27, Par. 43.*

Looking at the objections in the inverse order from that in which they are stated, it will be found upon examination that the warrant recites the fact that satisfactory evidence was presented to the magistrate that intoxicating liquors were kept in the house and its appurtenances, and that they were intended for sale in this state, in violation of law. That objection may, therefore, be considered as out of the case.

But there is a further answer interposed against the plaintiff in this action. This suit, as the declaration shows, is not for any act of the officer in entering and searching those rooms above the saloon, and which were occupied by the plaintiff as a dwelling, but for entering and searching the plaintiff's saloon. The place searched was a saloon—not a dwelling. The officer's return upon the warrant negatives the fact of searching any other part of the premises designated in the com-

plaint and warrant, except the saloon. Nothing appears upon the face of the process to indicate to the officer that it is not regular. It issued from a court of competent jurisdiction. *The officer is to be protected unless the process is void, and the want of validity can be seen upon its face.* *Elsemore v. Longfellow*, 76 Maine, 130. Nor is there anything in the case showing that the officer was not justified in entering the plaintiff's saloon and there searching for intoxicating liquors, as complained by that process."

In *State v. McNally*, 34 Me. 210, 56 Am. Dec. 650, it is held:

"Process, although voidable for irregularity, or mistake, protects officer who serves it if the magistrate who issued it had jurisdiction of the subject matter, and the process is regular on its face and does not disclose want of jurisdiction."

In *Melcher v. Scruggs*, 72 Mo. 408, the proposition is discussed at considerable length, as follows:

"The instructions given by the court were unobjectionable, but one asked by defendant, and refused, should have been given. It was as follows: 'The jury are instructed, that if they believe from the evidence, that defendant Scruggs was acting as constable at the time of taking the machine in controversy, and had a writ, or search warrant, issued by a justice of the peace in said Cole County, Missouri, then such warrant was a protection and justification to said Scruggs for his acts done thereunder, notwithstanding the writ may have been irregularly issued.' There was no evidence that Scruggs had been guilty of abusing the process, or that he did more than peaceably enter the house and demand the machine, which was delivered to him by the plaintiff. The only question therefore is whether the warrant was a justification for what he did. The affidavit made by Vaughan was insufficient to authorize the is-

suance of a warrant. It did not allege that the machine was stolen or embezzled, but that on or about the first day of July, 1875, one G. W. Gilmore, or some other person unknown, conveyed the machine to Melcher, and that it was supposed to be in Melcher's possession, in Jefferson township, Cole county, and that the affiant had reasonable grounds to suspect, and did suspect that the same was concealed with Nicholas Melcher in said township and county. Upon this the warrant issued by the justice of the peace was as follows:

State of Missouri, County of Cole, ss.

SEARCH WARRANT

THE STATE OF MISSOURI TO THE CONSTABLE OF JEFFERSON TOWNSHIP, IN THE COUNTY AFORESAID, GREETING:

Information having this day been given to James B. McHenry, as justice of the peace, within and for Jefferson township, in the county of Cole, by W. R. Vaughn, special agent of the Singer Manufacturing Company, of 404 North Fifth Street, St. Louis, Missouri that the following Singer sewing machine No. 1092558, the property of said company, that is to say, was on or about the first day of July, 1857, by G. W. Gilmore, or some person unknown to them, conveyed and concealed in the house of Nicholas Melcher in the county aforesaid, and in the city of Jefferson. And the said W. R. Vaughn, special agent of the Singer Manufacturing Company, of No. 404 North Fifth Street, St. Louis, has reasonable grounds to suspect, and does suspect that the said Singer sewing machine 1,092,558 is concealed on the said premises of Nicholas Melcher, at Jefferson City, in the township and county aforesaid. These are, therefore, to command in the day time, and into the place of concealment in the township and county aforesaid, and there diligently search for the said sewing machine, 1,092,558, and if the same be found,

or any part thereof, to bring such as may be found, before said justice, in the township and county aforesaid, without delay, to be disposed of there according to law, and have you then and there this writ.

Witness my signature, this 21st day of
March, 1876. JAMES B. MCHENRY,

Justice of the Peace.

Section 1, Wagner's Statutes, 1116, is as follows: 'Upon complaint being made, on oath, to any officer authorized to issue process for the apprehension of offenders, that any personal property has been stolen, or embezzled, and that the complainant suspects that such property is concealed in any particular place or house, if such magistrate be satisfied that there is reasonable ground for such suspicion, he shall issue a warrant to search for such property.' Section 2 provides that the warrant shall be directed to the sheriff of the county, or any constable of the township, and command him to search the place where such property is suspected to be concealed, in the day time, designating the place and particularly describing the property.

The doctrine announced in *Savacoe v. Boughton*, 5 Wend. 173, that 'if a mere ministerial officer executes any process, upon the face of which it appears that the court which issued it had not jurisdiction of the subject matter, or of the person against whom it is directed, such process will afford him no protection for acts done under it,' has been so often approved by this court, that it may be regarded as well established here. In the case of *Milburn v. Gilman*, 11 Mo. 68, in a separate concurring opinion, Napton, J., held that an order of sale of a steamboat, which had been bonded, and, therefore, discharged from the jurisdiction of the court, the facts appearing upon the face of the order, would not protect the sheriff, and observed that: 'The Sheriff is bound to know the law; he is, therefore, to take notice that he has a valid writ.' The majority of the

court decided that the sheriff could justify under the order on the ground that: 'it emanated from a court of general jurisdiction, having cognizance both of the matter and the person,' and although erroneous, he was bound to execute it, and being thus bound, he could not be liable in trespass. *It is well settled law, that when the court or justice of the peace has jurisdiction of the subject matter, the officer to whom the process of the court is directed, is not bound to examine into the validity of such process.* *Miller v. Brown*, 3 Mo. 131; *Higdon v. Conway*, 12 Mo. 295; 'It is sufficient that the execution is regular on its face and emanates from a court having jurisdiction of the subject.' In *Howard v. Clark*, 43 Mo. 348, Bliss, J. delivering the opinion of the court, said: '*If the court had no jurisdiction over the subject matter, the officer is supposed to know it; and an execution issued upon such judgment is no protection to him. It is his duty to refuse to serve it. But if the court has jurisdiction over the subject matter, and has only failed to obtain jurisdiction of the person, an execution will protect the officer, provided the failure does not appear upon the process in his hands.*'

Whether a case presents a want of jurisdiction or an irregular process or writ, is often a question of some difficulty. It is difficult to announce a rule on the subject of easy application in all cases, but in *Savacool v. Boughton*, *supra*, the doctrine is as explicitly stated as is possible in a general proposition. In the case at bar the justice had jurisdiction over the subject matter. He was authorized to issue search warrants, on affidavit filed, and whether the affidavit filed was sufficient, or insufficient, is not a matter for the consideration of the ministerial officer to whom the warrant is directed. In *Sandford v. Nichols*, 13 Mass. 288, which was an action of trespass, in which the defendants relied as a defense upon a search warrant, issued by a justice of the peace, Parker, C. J., for the court, said: "We think that the defendants could have justified the acts com-

plained of, by showing a regular warrant from a magistrate having jurisdiction over the subject without showing that it was founded upon a complaint under oath. It will not do to require of executive officers, before they shall be held to obey the precepts directed to them, that they shall have evidence of the regularity of the proceedings of the tribunal which commands the duty * * * * It is a general and known principle that executive officers, obliged by law to serve legal writs and processes, are protected in the rightful discharge of their duty, if those precepts are sufficient in point of form, and issue from a court or magistrate having jurisdiction of the subject matter. If such a magistrate shall proceed unlawfully in issuing the process, he and not the executive officer will be liable for the injury consequent upon the act.' See also *Taylor v. Alexander*, 6 Ohio, 147; *Bogan v. Stoutenburg*, 7 Ohio, 2 Pt. 133; *Davis v. Bush*, 4 Blackford, 330; These cases are in accord with *Sanford v. Nichols*, 13 Mass. 288."

The case of *Boston & Maine R. R. Co. v. Small*, 85 Maine, 462, (25 Am. St. Rep. 384,) is particularly applicable to the cases at bar, in that if the injunctions about which the Petitioner is here complaining are valid, then, when an executive officer of a state court receives a search and seizure warrant for execution, it would become necessary for him, instead of obeying the letter of his warrant, to abandon the same and substitute therefor his own personal judgment as to whether or not the intoxicating liquors described in the warrant were subject to forfeiture; and according to the Supreme Court of Maine, in thus abandoning the warrant he would thereupon become a wrongdoer and trespasser, ab initio, and liable in a civil action in all respects, and to the same extent, as though he had proceeded to the premises and searched without any warrant.

The language of the opinion is as follows:

"Recurring, now, to the case before us, it is evident that the principal purpose of the statute, (Rev. Stats., c. 27, sec. 40), and of the process issued under it, was the seizure of whatever intoxicating liquors were found, and the bringing them before the court for determination whether they were intended for unlawful sale. The authority to enter the car and there search was given for that express purpose. The defendant officer exercised the authority to search, but he wilfully and deliberately refused to seize the intoxicating liquors he found, and made a false return that he found none. He assumed to nullify the main command of the statute and of his process. He wilfully defeated the very purpose of the search he assumed to make. Such a flagrant disobedience should, and we think does, destroy the protection he might otherwise have justly enjoyed.

The good faith of the defendant, his strong belief that the intoxicating liquor he found was not intended for unlawful sale, is no excuse, and does not mitigate the penalty. As said in *Guptill v. Richardson*, 62 Me. 262, the fact 'that it (the liquor) was not liable to forfeiture would not excuse the officer for disobedience to his precept. The command to seize the liquors was plain. His duty was plain. He was given no discretion—no power to determine what intoxicating liquors he would or would not seize. He should not have arrogated to himself any such power.

It is urged that it may at times work great hardship upon an innocent owner if an officer must in every case seize whatever intoxicating liquors he finds under a search warrant, however evident it is they are not intended for unlawful sale. The policy of the law is that every owner or keeper of intoxicating liquor shall be prepared to defend them before the courts, and not before the officer, against the accusation that they are intended for unlawful sale. The convenience of such owner or keeper must give way to the good

of the people, and to their undoubted right to protect themselves in this way against the consequences of the traffic in such articles. At any rate the officer must obey the law and his lawful process.

It is urged that the omission to seize the liquors in this case caused this plaintiff no special injury, however much the public may have been harmed. The search, however, did the plaintiff an injury. The lock and door of its car were broken by the defendant. He might have made that breaking official and lawful by doing his whole official duty. He saw fit, however, to disregard his precept and abandon his duty. This abandonment of duty was also an abandonment of his authority, and left him amenable for all the damage done by him to the plaintiff corporation."

It must necessarily follow that when the officers of the State of Oklahoma, proceeding under and pursuant to said Sections 4184 and 4185 of the 1909 Compiled Laws of Oklahoma, seize or cause to be seized any particular quantity of intoxicating liquor found within the borders of the State of Oklahoma, they are in no sense trespassers or wrongdoers. Their acts in such cases are the acts of the State of Oklahoma, and the process of the State Court in the form of a search and seizure warrant fully protects them in the discharge of their official duties. There can be nothing malicious about such proceedings, for the reason that before such search and seizure warrant can issue, the existence of probable cause must be judicially found and determined by the judge or magistrate before whom the proceeding is instituted and by whom the search and seizure warrant is issued, and it would be paradoxical in the extreme to contend that a thing is done maliciously when it cannot be done at all until a preliminary investigation is had and the existence of

probable cause judicially found and determined. And after the search and seizure warrant is issued, a hearing upon the return thereof is provided for in such manner as to afford any and all persons having any interest in any of the intoxicating liquors seized, ample opportunity to appear and assert the same. All rights afforded by the commerce clause of the Constitution of the United States will be fully observed and protected by the state court at such hearing. Hence it cannot be truthfully said that any person whomsoever has been wronged or injured in his person or property rights, in any legal sense whatsoever, by a seizure of intoxicating liquor found within the borders of the State of Oklahoma, made in such manner, and only after a prima facie showing, under oath, before a judge or magistrate, of the existence of probable cause for believing that the same constitutes and is a public nuisance.

III.

THE EFFECT OF THE INJUNCTIONS COMPLAINED OF BY THE PETITIONER HEREIN IS TO STAY PROCEEDINGS IN THE COURTS OF A STATE IN VIOLATION OF SECTION 720 OF THE REVISED STATUTES OF THE UNITED STATES.

There is another reason why the injunctions complained of by the Petitioner in the cases at bar are void. Section 720 of the Revised Statutes of the United States provides:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to procedure in bankruptcy."

Now, as hereinabove stated, it is well settled by the decisions of this Court that interstate shipments of intoxicating liquors do not become subject to the exercise of the police power of a state by virtue of the Wilson Act, until the same have arrived at the point of destination, and have been there delivered by the interstate carrier to the consignee under the contract of interstate shipment. It is likewise true, as hereinabove stated, that there is a great difference between the "police power" and the "judicial power" of a state; and interstate shipments of intoxicating liquor, as well as all other property, become subject to the exercise of the "judicial power" of a state as soon as they arrive within its borders. Such is the express holding of this Court in the recent case of *American Express Company v. Mullins*, 29 Sup. Ct. Rep. 381. The facts in that case were, in substance, as follows:

Mullins, a liquor dealer, delivered twenty packages of whiskey to the Express Company at Covington, Kentucky, to be carried, C. O. D., to Oswego, Labette County, Kansas. The Express Company carried the whiskey to Oswego, where it was seized and taken out of its possession by the sheriff of the county under a warrant with seizure clause attached, duly issued by the District Court of the County and the whisky thus seized was thereafter destroyed in pursuance of a judgment of forfeiture duly rendered against the res by the said state court. When the seizure was made the Express Company promptly notified Mullins thereof, and called upon him to defend the action. This Mullins failed to do, and sometime thereafter, brought suit against the Express Company in Kentucky, on the contract of interstate shipment. The Express Company pleaded the judgment of the Kansas Court in bar. Mullins contended that the judgment of the Kansas Court was void on the ground that the whiskey

not having become subject to the exercise of the "police power" of the State of Kansas, at the time the seizure was made, it was, therefore, not subject to the exercise of the "judicial power" of the State of Kansas, and the judgment for forfeiture was void for want of jurisdiction of the subject matter. The Kentucky Court sustained this contention on the part of Mullins and the case was brought to this court on writ of error, and reversed. In the opinion of the Court, which was delivered by Mr. Justice Brewer, it is said:

"While it is the duty of a carrier to safely carry and promptly deliver to the consignee the goods intrusted to its care, yet that duty does not call upon it to forcibly resist the judicial proceedings in the courts of the state into or through which it is carrying them. The company carried the goods to Kansas in obedience to the terms of the shipment. On arrival in that state they were taken by judicial process out of its possession and destroyed, the process being issued in a proceeding in the nature of one in rem. Undoubtedly, it was authorized to appear in the Kansas court and contest for the rightfulness of its possession, but it might also notify the owner of the property, and call upon him to carry on the litigation. This it did: notified him in time, and received from him an assurance that he would contest the legality of the seizure. This relieved the company from further responsibility, and the owner can no longer complain of it because the judgment of the Kansas court seized and disposed of the property. *Stiles v. Davis*, 1 Black, 101, 17 L. Ed. 33; *Wells v. Maine*, S. S. Co., 4 Cliff. 228, Fed. Cas. No. 17,401; *Edwards v. White Line Transit Co.* 104 Mass. 159, 6 Am. Rep. 213; *Bliven v. Hudson River R. Co.* 36 N. Y. 403; *Ohio & M. R. Co. v. Yohe*, 51 Ind. 181, 19 Am. Rep. 727; *Savannah, G. & N. R. Co. v. Wilcox, G. & Co.*, 48 Ga. 432; *Baltimore & O. R. Co. v. O'Donnell*, 49 Ohio St. 489, 501, 21 L. R. A. 117, 34 Am. St. Rep. 579, 32 N. E. 476.

In the opinion of the judge of the Kentucky Circuit Court is was said:

The court is of the opinion that conduct of the defendant in permitting the goods to be seized and destroyed under a judgment by default, as disclosed by its answer, without defending and asserting its rights as a carrier, which its duty as carrier required it to do, is in effect a fraud; and certainly no judgment suffered to be rendered by the consent, connivance or fraud of the carrier can be relied upon to relieve the person by whose consent, connivance, or fraud it was rendered from a legal obligation.'

It is undobutedly true that if the carrier through connivance or fraud, permits a judgment to be rendered against it, such judgment cannot be invoked by it as a bar to an action brought by the owner of the goods. But there is nothing in the answer, a demurrer to which was sustained, indicating any consent, connivance or fraud, and this court will determine for itself whether there is anything in the record which shows any such consent, connivance, or fraud. *Harris v. Balk*, 198 U. S. 215, 49 L. Ed. 1023, 25 Sup. Ct. Rep. 625; 3 A. & E. Ann. Cas. 1084.

It was further suggested in the opinion of the judge of the Kentucky court that the Kansas judgment was wrong and in conflict with the decision of this court in *American Exp. Co. v. Iowa*, 196 U. S. 133, 49 L. ed. 417, 25 Sup. Ct. Rep. 182. But as held in *Fauntleroy v. Lum*, 210 U. S. 230, 237, 52 L. ed. 1039, 28 Sup. Ct. Rep. 641, 643, : "A judgment is conclusive as to all the media concludendi (*United States v. California & O. Land Co.* 192 U. S. 355, 48 L. ed. 476, 24 Sup. Ct. Rep. 266); and it needs no authority to show that it cannot be impeached either in or out of the state by showing that it was based upon a mistake of law."

We are of the opinion that the Circuit Court of Kentucky erred, and its judgment is reversed and the case remanded to that court for further proceedings not inconsistent with this opinion."

The principle announced in this case is the same as that which applies to all property which may be the subject of interstate commerce. For example: Suppose the intoxicating liquors involved in the Mullins case had been, by A, stolen from Mullins in the State of Kentucky and shipped into the State of Kansas, consigned to B. Any sheriff or constable of the State of Kansas could, under authority of a writ of replevin, issued out of any Kansas Court of competent jurisdiction, in a civil action brought therein by Mullins, for the recovery of his property, have seized said liquors under such replevin writ, while the same were in the hands of the interstate carrier under the contract of interstate shipment. This is so, because the "judicial power" of a state operates upon all property within its borders, whether the same be interstate commerce or not; and a plea in abatement to such replevin action on the ground that the action could not be maintained because the property was interstate commerce, at the time of the execution of the writ, would be universally recognized as absurd. The fact that the liquors were interstate commerce at the time of the execution of the replevin writ would not defeat the court's jurisdiction. Being within the borders of the state the liquors would be subject to the exercise of the "judicial power" of the state, and therefore, a proper subject for litigation in the state courts in any judicial proceeding, involving their *ownership, possession or status*.

This, of course, is not true as to the "police power" of the state, as has been hereinabove repeatedly pointed out. It is the *status* of intoxicating liquor and not merely its presence within the borders of a state, which determines whether or not the same has become subject to the exercise of the "police power." If such liquor was a legitimate subject of interstate commerce at the time it was brought into the state, and has not

yet been delivered by the interstate carrier under the contract of interstate shipment, to the consignee at the point of destination, then its *status* is still that of interstate commerce and the "police power" of the state has not attached thereto. But the "judicial power" of the state attaches as soon as the liquors arrive within its borders and can be invoked for the sole purpose of judicially determining the *status* of such intoxicating liquors.

But the effect of the injunctions here complained of is to prevent and prohibit the "judicial power" of the State of Oklahoma being invoked, even by the State itself, for the purpose of judicially determining the *status* of any particular quantity of intoxicating liquor found within its borders, insofar as questions touching its *status* as interstate commerce are concerned. Under those injunctions such questions cannot be litigated in the state courts, and the officers of the state must arrive at a determination of such mixed questions of law and fact, purely by conjecture and wholly without the aid of a judicial tribunal. All proceedings in the courts of the state are effectually stayed by said injunctions, insofar as the judicial determination of such questions is concerned. For example: Suppose A, B, and C, citizens of Muskogee, in the State of Oklahoma, have knowledge that a liquor nuisance exists in the freight depot of the Missouri, Kansas and Texas Railway Company, in the city of Muskogee, and they go before the county judge of Muskogee County, and file with him a written complaint, containing a full statement of the facts which constitute such probable cause, and which complaint is duly sworn to by each of them. The county judge acts upon such complaint and judicially determines therefrom that there is probable cause for believing that such liquor nuisance exists, and thereupon he causes to be instituted in his court a proceeding for the judi-

cial determination of the existence of such liquor nuisance. The sworn complaint filed with him by A, B, and C is the initial pleading and the cause is styled: "The State of Oklahoma vs. Certain Intoxicating Liquors, (Describing the same as particularly as may be.)" Thereupon, pursuant to Sections 4184 and 4185 of the 1909 Compiled Laws of Oklahoma, the county judge issues a search and seizure warrant directed to the sheriff of Muskogee County, and commanding him to proceed to said freight depot of the Missouri, Kansas and Texas Railway Company, seize all liquors described in the warrant and found there, and make due return thereof to the court. But when such search and seizure warrant is placed in the hands of the sheriff, he examines the same and replies: "I am enjoined by the Circuit Court of the United States for the Eastern District of Oklahoma, in a suit brought against me in that court by the Missouri, Kansas and Texas Railway Company, from in any manner seizing or interfering with interstate shipments of intoxicating liquor while the same are in the possession of said Missouri, Kansas and Texas Railway Company, and therefore, I cannot execute this warrant. I have no personal knowledge of the *status* of the liquors described in this warrant, and do not know whether the same have ceased to be interstate commerce or not; and if it should develop that the same or any part thereof, are interstate shipments, in the possession of said Railway Company, then I would be cited and punished for contempt by said Circuit Court of the United States." What effect would this have on the proceeding in the county court of Muskogee County? Could said proceeding possibly be more effectually stayed by a writ of injunction issued out of said Circuit Court of the United States? Certainly not. The *judicial power* of the State of Oklahoma is thereby fully, effectually and completely blocked, and

it becomes utterly impossible for said state to litigate, in one of its own courts, the question of the *status* of said intoxicating liquors, notwithstanding there is probable cause for believing the same constitute and are a public nuisance.

Now, as stated in division V. of Petitioner's Petitions, if it were not for the existence of such injunctions, the sheriff of Muskogee County could lawfully proceed to execute said search and seizure warrant, and make due return thereof, and a hearing upon such return would be had pursuant to said Section 4185 of the 1909 Compiled Laws of Oklahoma, whereupon, if it were shown or made to appear that the liquors seized or any portion thereof, occupied the *status* of interstate commerce, at the time the seizure was made, the same would be ordered returned to the carrier or other person from whom taken. Certainly all of this is well within the "judicial power" of the State of Oklahoma; and when an inferior Federal Court, by writ of injunction, interferes with and stays such proper exercise of the "judicial power" of a state, it is doing so in direct violation of said Section 720 of the Revised Statutes of the United States

The only case that we have been able to find where, strictly speaking, it can be said that the identical question involved in this division of the argument was presented and decided, is *Arbuckle v. Blackburn*, 51 C. C. A. 122, 113 Fed. 616, 65 L. R. A. 870, a decision by the Circuit Court of Appeals for the Sixth Circuit, in which Mr. Justice Day, who was then a member of that Court, wrote the opinion. Mr. Justice Lurton, also sat in the case and concurred in the opinion. Believing as we do, that this case is directly in point in support of the Petitioner's contention in the cases at bar, we quote therefrom at considerable length, as follows:

"The matter to be reviewed is the sufficiency of the bill and amendment to warrant the intervention of a court of equity to restrain the defendant as prayed. An analysis of the bill shows the claim to be that respondent, the dairy and food commissioner of the state of Ohio, is proceeding, upon an alleged false and erroneous construction of the statutes of Ohio, to prosecute persons in Ohio dealing in the complainant's product known as 'Arosa' and is giving out the statement that this product is sold in violation of the laws of the state. The act passed March 20, 1884, (2 Bate's Anno. Stat. (Ohio) Secs. 4200-4 to 4200-8), provides against the adulteration of foods and drugs, makes it an offense within said state to manufacture for sale, offer for sale, or sell any article of food which is adulterated, within the meaning of the act; and the term 'food' used therein, includes all articles used as food or drink by man, whether simple, mixed, or compound. It is further provided in the act that food shall be deemed to be adulterated, among other things, 'if it is colored, coated, polished, or powdered, whereby damage or inferiority is concealed, or if by any means, it is made to appear better or of greater value than it really is.' It appears that the coffee of the complainants is coated, after roasting, with a compound of sugar and eggs, for the purpose, as alleged in the bill, of retaining the full strength of the coffee, 'preventing the absorption of any injurious or noxious gases or flavors, and settling the same when prepared for consumption;' thus bringing Arosa within the terms of the Ohio law, which provides that the act shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food,' if each and every article sold or offered for sale shall be distinctly labeled as a mixture or compound with the name and per cent of each ingredient therein, and are not injurious to health.' It is claimed that notwithstanding Arosa is thus labeled, with a statement of the elements of the compound, and is not injurious to health, the food commissioner is threatening proceedings, and is

claiming that the same is within the prohibition of the 6th clause of the statute above quoted, making it an offence to coat an article of food, whereby damage or inferiority is concealed, and the same made to appear better or of greater value than it really is. It is urged that this statute, 'construed as respondent claims it should be,' is in conflict with the 14th amendment of the Constitution as it deprives the complainants of their property, by prohibiting them from selling it in Ohio, and dealers from selling the same in that state, notwithstanding the same are ordinary articles of food and not injurious to health, and will destroy the market value of the product, and deny to the complainants within the jurisdiction of Ohio the equal protection of the laws. The argument is that, conceding, for this purpose, that the statute is constitutional when properly construed and enforced, the respondent's wrongful construction thereof results in an infraction of the constitutional rights of the complainants. This alleged wrong construction, when analyzed, amounts to this: The complainants claim that their compound is not within the terms of the statute. The food commissioner wrongfully claims that it is. *Upon this branch of the case the question is, may a court of equity entertain a bill to inquire into this matter, and, if it finds that the complainant is right in its contention, enjoins the food commissioner from instituting proceedings under the laws of Ohio? The jurisdiction of courts of equity has never been carried to this extent in authoritative decisions.* On the contrary, the Supreme Court, in more than one instance, has denied such jurisdiction to a court of equity. The rule is thus stated by Mr. Justice Gray in *Re Sawyer*, 124 U. S. 200-211, 31 L. Ed. 402, 8 Sup. Ct. Rep. 482-488: 'The modern decisions in England by eminent equity judges concur in holding that a court of chancery has no power to restrain criminal proceedings unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there. *Atty. Gen. v. Cleaver*, 18 Vs.

Jr. 211, 220; *Turner v. Turner*, 15 Jur. 218; *Saull v. Browne*, L. R. 10 Ch. 64, 44 L. J. Ch. N. S. 1, 31 L. T. N. S. 493, 23 Week. Rep. 50, 13 Cos. C. C. 30; *Kerr v. Preston*, L. R. 6 Ch. Div. 463, 46 L. J. Ch. N. S. 409, 25 Week. Rep. 264. Mr. Justice Story in his *Commentaries on Equity Jurisprudence*, affirms the same doctrine. Story Eq. Jur. Sec. 893. And in the American courts, so far as we are informed, it has been strictly and uniformly upheld, and has been applied alike whether the prosecutions or arrests sought to be restrained arose under statutes of the state or under municipal ordinances. *West vs. N. Y.* 10 Paige, 539; *Davis v. American Soc. for Prevention of Cruelty to Animals*, 75 N. Y. 362; *Tyler v. Hammersley* 44 Conn. 419, 422, 26 Am. Rep. 479; *Stuart v. La Salle County*, 83 Ill. 341, 25 Am. Rep. 397; *Devron v. First Municipality*, 4 La. Ann. 11; *Levy v. Shreveport*, 27 La. Ann. 620; *Moses v. Mobile*, 52 Ala. 198; *Gault v. Wallis*, 53 Ga. 675; *Phillips v. Stone Mountain*, 61 Ga. 386; *Cohen v. Goldsboro*, 77 N. C. 2, *Waters Pierce Oil Co. v. Little Rock*, 39 Ark. 412; *Spinl v. Francis*, 19 Fed. 670; and 20 Fed. 567; *Suess v. Noble*, 31 Fed. 855.'

In the later case of *Harkrader v. Wadley*, 172 U. S. 148, 43 L. Ed. 399, 19 Sup. Ct. Rep. 119, the same rule is recognized and enforced. Mr. Justice Shiras, at page 169, 172 U. S. page 406, 43 L. Ed. and page 127, 19 Sup. Ct. Rep., speaking for the court says: '*No case can be found where an injunction against a state officer has been upheld where it was conceded that such officer was proceeding under a valid state statute. In the present case the commonwealth's attorney in the prosecution of an indictment found under a law admittedly valid, represented the state of Virginia; and the injunctions were therefore, in substance, injunctions against the state. In proceeding by indictment to enforce a criminal statute, the state can only act by officers or attorneys, and to enjoin the latter is to enjoin the state. And it was said in Re Ayers, 123 U. S. 443,*

497, 31 L. Ed. 216, 8 Sup. Ct. Rep. 179: *'How else can the state be forbidden by judicial process to bring actions in its name, except by constraining the conduct of its officers, its attorneys, and its agents? And if all such officers, attorneys, and agents are personally subjected to the process of the court, so as to forbid their acting in its behalf, how can it be said that the state itself is not subjected to the jurisdiction of the court, as an actual and real defendant?'*

Upon the authority of this case and others decided in the Supreme Court, it seems clear that this action cannot be maintained consistently with the 11th Amendment to the Constitution, withholding the judicial power of the United States from suits in law or equity commenced or prosecuted against one of the United States by citizens of another state, or citizens or subjects of any foreign state. In *Poindexter v. Greenhow*, 114 U. S. 270-287, 29 L. Ed. 185-191, 5 Sup. Ct. Rep. 903, 962, quoted with approval in *Re Ayers*, 123 U. S. 443, 497, 331 L. Ed. 216, 226, 8 Sup. Ct. Rep. 179 it was said, 'that the question whether a suit is within the prohibition of the 11th Amendment is not always determined by reference to the nominal parties to the record.' In the *Ayers* case the suit for injunction, which the court held could not be entertained, was brought against the attorney general and treasurers of counties, cities and towns in Virginia, just as the present case is brought against Joseph E. Blackburn, dairy and food commissioner of Ohio. The injunction sought is against the prosecution of suits in the Ohio Courts which are about to be instituted by Blackburn, not in his individual capacity, but as an officer of the state expressly charged with the enforcement of all laws against frauds and adulterations or impurities in foods, drink, or drugs, and unlawful labeling in the state of Ohio. It is made his duty by statute to prosecute, or cause to be prosecuted, any person or persons, firm or firms, corporation or corporations engaged in the manufacture or sale of any adul-

terated article or articles of food or drink, or adulterated in violation of or contrary to any laws of the State of Ohio. 1 Bates' Anno. Stat. Ohio, Secs. 409-7, 409-8. It is also provided that food so coated as to conceal damage or inferiority shall be deemed to be adulterated. Paragraph 6 of Section 4200-6, 2 Bates' Anno. Stat. (Ohio). What, then is the object of the injunction sought in this case? It is no more nor less than to restrain the officer of the state from bringing prosecutions for violations of an act which such officer is expressly charged to enforce in the only way he is authorized to proceed,—by bringing criminal prosecutions in the name of the state. This is virtually to enjoin the state from proceeding through its duly qualified and acting officers. If the food commissioner may be enjoined from instituting such prosecutions, why may not the prosecuting attorney, or any officer of the state charged with the execution of the criminal laws of the state? While the state may not be sued, if the bill can be sustained against its officers it is as effectually prevented from proceeding to enforce its laws as it would be by an action directly against the state. This view of the case, in our judgment, is amply sustained by the cases above cited, and by the later case of *Fitts v. McGhee*, 172 U. S. 516, 43 L. Ed. 535, 19 Sup. Ct. Rep. 269, in which the subject is fully discussed by Mr. Justice Harlan. In so far as this action seeks an injunction against the respondent from proceeding to enforce by prosecution the provisions of the statutes of Ohio above cited, the courts of the United States are deprived of jurisdiction by the 11th Amendment to the Constitution."

There are numerous other cases which, if not directly in point, are very persuasive by way of analogy.

In *Freeman v. Howe*, 24 How. 451, it is said:

"In the case of *Taylor et al. Carryl*, (20 How 583) the majority of the court were of opinion

that, according to the course of decision in the case of conflicting authorities under a state and Federal process, and in order to avoid unseemly collision between them, the question as to which authority should for the time prevail did not depend upon the rights of the respective parties to the property seized, whether the one was paramount to the other, but upon the question, which jurisdiction had first attached by the seizure and custody of the property under its process."

In *City Bank of New York v. Skelton*, 5 Fed. Cas. No. 2739, it is said:

"But there is an impediment to the enforcement of that principle by this court in the case now before it. One of the suits pending, against which the plaintiff asks relief, is prosecuted in the state court of chancery, and this court is clothed with no power to restrain or interfere with a suit so situated. A court of the United States, in executing a jurisdiction vested in it, may undoubtedly act upon parties who are suitors in a state court in relation to the same subject matter, so far at least as to compel their submission to such judgment as the United States court may render in a case of which it has cognizance. But, even then, it cannot interdict their prosecuting their suit in the state court, much less control any action pending in such court. It is understood that the state courts uniformly adopt the same doctrine in respect to courts of the United States. Here it is to be assumed that the state court is competently possessed of the case before it, and a decree of this court compelling the plaintiffs and one of the defendants in that court to interplead here, would be an exercise of that authority and control over the state court itself which can only be allowed to a tribunal of general jurisdiction under the same government."

In *Daly v. Sheriff*, 6 Fed. Cas. No. 3553, the leading case is reviewed and the proposition discussed in the opinion, as follows;

"The only sound objection to the granting of an injunction is that the state court has acquired jurisdiction over the property seized, which this court should not interfere with. In *Mock v. Kennedy*, 11 La. Ann. 525, decided in June, 1856, the supreme Court of Louisiana, speaking by Mr. Justice Lea, upheld the right of a state court to restrain by injunction a United States marshal, who, on a writ of fieri facias, directed against the property of A., had seized the property of B. The point is thus forcibly argued by Judge Lea: "The question presented is one of title, which is wholly independent of the proceedings in the federal court. Every court, whether state or federal, has as a general rule an exclusive control over the enforcement of its own process except so far as it is subject to the revision of an appellate tribunal. This court cannot inquire into the validity of the judgment upon which the execution issued, or the validity of these proceedings to which she is not a party, invokes the protection of the court against an illegal seizure of her property made by the officer charged with the enforcement of a writ of execution against a third person. She tender an issue of title that has no connection with the proceedings in the federal tribunal. This question we think the state tribunal may lawfully examine and determine, as it involves no conflict of jurisdiction'. So in *Cropper v. Coburn*, (Case No. 3,416) Mr. Justice Curtis took the same view and held that the circuit court of the United States could enjoin a sheriff who on an execution against a judgment debtor had seized the property of a third person. These decisions are sustained by the views of Chancellor Kent, as expressed in his *Commentaries* (volume 1, p. 410), as follows: 'If the officer of the United States who seizes or the court who awards the process to seize has jurisdiction of the subject matter, then the inquiry into the validity of the seizure belongs exclusively to the federal courts. But of there be no jurisdiction in the instance in which it is asserted or if a marshal of the United States under an execution in favor of the United States

against A. should seize the person or property of B., then the state courts have jurisdiction to protect the person and property so illegally invaded; and it is to be observed that the jurisdiction of the state court in Rhode Island was admitted by the supreme court of the United States in *Slocum v. Maybury*, upon that very ground.'

Unfortunately for the complainant, however, all this has been expressly overruled by the supreme court of the United States in *Freeman v. Howe*, 24 How. (65 U. S.) 453. In that case Mr. Justice Nelson speaking for the court says: 'Another and main ground relied on by the defendants in error is that the process in the present instance was directed against the property of the railroad company, and conferred no authority upon the marshal to take property of the plaintiff in the replevin suit. But this involves a question of right and title to the property under the federal and not the state courts to decide.' Again he says: 'The case of *Slocum v. Maybury*, 2 Wheat. (15 U. S.) 2, has been referred to as holding a different doctrine from that maintained by the plaintiff in error in the present case. We have examined that case attentively and are satisfied that this is a misapprehension.' He adds further on: 'Reference was made also in the argument in the present case to an opinion expressed by Chancellor Kent in his *Commentaries* (volume 1, p. 410). He then quotes the passage already herein cited and adds: 'The error into which the learned Chancellor fell, from not being practically familiar with the jurisdiction of the federal courts, arose from not apprehending for the moment the effect of transferring from the jurisdiction of the federal court to that of the state, the decision of the question in the example given, for it is quite clear upon the principle stated, the jurisdiction of the former and the validity and effect of its process would not be what the federal but state court might determine. No doubt if the federal court had no jurisdiction of the case, the process would be invalid, and the seizure of the

property illegal, for which the party aggrieved is entitled to his remedy. But the question is, which tribunal, the federal or state, possesses the power to determine the question of jurisdiction or validity of the process. The effect of the principle stated by the chancellor, if admitted, would be most deep and extensive in its operation upon the jurisdiction of the federal court, as a moment's consideration will show. It would draw after it into the state courts not only all questions of the liability of property seized on mesne or final process issued under authority of the federal courts, including the admiralty, for this court can be no exception, for the purpose for which it was seized, but also arrest upon mesne and imprisonment on final process, of the person both in civil and criminal cases; for in every case the question of jurisdiction could be made; and until the power was assumed by the state court, and the question of jurisdiction of the federal court was heard and determined, by it, it could not be known whether in the given case it existed or not. We need scarcely remark that no government could maintain the execution or administration of the laws, civil or criminal if the jurisdiction of its judicial tribunals, were subject to the determination of another. The decision if affirmed and approved in the late case of *Buck v. Colbath*, 3 Wall. (70 U. S.) 334. It seems clear that we converse of the proposition thus enforced by the supreme court is true, namely, that the federal courts cannot interfere with the powers of the state courts save in cases where the jurisdiction of the subject matter is exclusively vested in the federal courts, as in proceedings in bankruptcy, and cases arising upon letters patent and copyright. The motion for the injunction must be overruled."

In *Fisk v. Union Pac. R. Co.*, 9 Fed. Cas. No. 4827, it is said:

"Irrespective of the views already presented, if this suit is an existing proceeding in the state court, this court is inhabited, by the 5th section

of the act of March 2, 1793, from granting an injunction to stay such proceeding. The statute uses, indeed, the words, 'a writ of injunction'; but the spirit of it is, that this court shall not in any manner stay a proceeding in a court of state. It is not an inhibition merely against issuing an injunction in the shape of a writ injunction, mandamus, or prohibition, directed to the state court itself, but it has been construed always as an inhibition against staying a party from conducting such proceedings in a state court. Such was the view of this court in the case of *City Bank of New York v. Skelton*, (Case No. 2,7394)' where this court was asked to stay a defendant from taking further proceedings in a suit which he had brought in a state court. this court says: 'There is an impediment to the enforcement of that principle by this court in the in the case now before it. One of the suits pending, against which the plaintiff asked relief, is prosecuted in the state court of chancery, and this court is clothed with no power to restrain or interfere with the suit so situated. A court of the United States, in executing a jurisdiction vested in it, may undoubtedly act upon parties who are suitors in a state court in relation to the same subject matter, so far, at least, as to compel their submission to such judgment as the United States court may render in a case of which it has cognizance. But, even then, it cannot interdict their prosecuting their suits in a state court, much less control any action pending in such court. It is understood that the state courts uniformly adopt the same doctrine in respect to courts of the United States.' In the order made in that case, this court declared, that the proceedings in the state court were not within the cognizance of this court, or subject to its control, and therefore, it issued an injunction merely restraining the defendant from further prosecuting suits brought by him in this court, until the suit in the state court should be decided.'

In *Haines v. Carpenter*, 91 U. S. 254, it is held :

"Except where otherwise provided by the Bankrupt Law, the courts of the United States are expressly prohibited by sect. 720 of the Revised Statutes from granting a writ of injunction to stay proceedings in a state court."

In *Dial v. Reynolds*, 96 U. S. 340, the Court say:

"The gravamen of what is desired as to *Reynolds* is an injunction to prevent his proceeding at law in the State court. Without this, all else is of no account. Any other remedy would be unavailing. Such an injunction, except under the Bankrupt Act, no court of the United States can grant. Act of March 2, 1793, sec. 5, (1 Stat. 334); Rev. Stat. Sect. 720; *Diggs v. Wolcott*, 4 Cranch, 179; *Peck et al., Jenness, et al.*, 7 How. 612; *Watson v. Jones*, 13 Wall. 679."

The case of *Hemsley v. Meyers*, 45 Fed. 283, if not directly in point, is certainly very nearly so, and the subject matter of the controversy is indeed, very similar to that in the cases at bar. The opinion, is by Caldwell, Circuit Judge, and we quote therefrom at length:

"Section 720 of the Revised Statutes reads as follows:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

This section, save the exception, is as old as the judicial system of the United States. Its prohibition is absolute and unqualified, except where the injunction is authorized by law in proceedings in bankruptcy. This exception serves to emphasize the prohibition as to all other cases. In cases where the jurisdiction of the court of the United States first attaches, the statute has no application; but in cases we are considering the jurisdic-

tion of the state courts first attached, and that fact, independently of the statute, according to a well-settled rule, is a bar to the jurisdiction of this court. To the observance of the rule enunciated by this section and other cognate rules we are indebted for the almost uniform harmonious relations that have existed between the state and the United State courts, from the foundation of the government down to the present time. The rule would probably have been the same independently of the statute. The state courts observe the rule toward the courts of the United States upon principle, and without any statute requiring them to do so. It is not merely a rule of comity, but an absolute rule of law, obligatory on the courts of both jurisdictions, and absolutely essential to the maintainance of harmonious relations between the state and the United States courts, and indispensable to the due and orderly administration of justice in both. Appeals may be taken in certain cases from the state courts to the supreme court of the United States, and in this way suitors claiming a right or privilege under the constitution of the United States, or an act of Congress, or a treaty may have the validity of their claim finally determined by the supreme court of the United States; but the district and circuit courts of the United States possess no appellate or supervisory jurisdiction over the state courts. The circuit courts of the United States and the state courts are each destitute of all power either to restrain or review the process or proceedings in the other. This rule has had the approval of the courts, lawyers, legislators and laymen from the beginning of our system of government. The rule commends itself to the common sense of all mankind; and their can be no higher evidence of the soundness of a rule of law than there is a universal consensus of opinion that it is sensible and just. The contention of the counsel for the plaintiffs is that the statutes and rules of law which have been adverted to, and which, in the opinion of the court, preclude it from exercising jurisdiction in these cases, have

been repealed or abrogated, either wholly or partially by section 1979 of the Revised Statutes of the United States, first enacted as a part of the civil rights bill, April 20, 1871. And the learned judge who delivered the opinion of the court on the motion for a temporary nujunction seems to entertain the same view.

The Section reads as follows:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof, to the deprivation of an rights, privileges or immunities secured by the constitution and laws, shall be liable to the party injured in an action of law, suit or equity, or other proper proceeding for redress."

The provision in the section, as originally enacted, conferring jurisdiction on the district and the circuit courts of the causes of action enumerated in the section, has been transferred to the head of jurisdiction of those courts respectively. The section does not repeal, limit, or restrict the previously existing rules affecting the relations of the state and the United States courts, nor does it abolish the distinction between law and equity, or change the rules of pleading or mode of proceeding in any respect. If the section was stricken out of the statute, the rights, privileges, and immunities of the citizens under the constitution and laws would remain to them, and the mode of seeking redress for a deprivation of these rights would be the same that it is now. The section declares that the mode of proceeding to obtain redress for a deprivation of these rights shall be by 'an action of law, or a suit in equity, or other proper proceeding for redress.' If the case is one which under the well-understood rules of pleading is cognizable only at law, then an action at law is the 'proper proceeding for redress', and

if it is one cognizable only in equity then a suit in equity is the 'proper proceeding for redress.' No new mode of proceeding is enacted, and no new right created by this section. As it now stands in the Revised Statutes, it may be properly dominated a 'declaratory' statute, and the statutes and rules of law defining and regulating the powers, relations, and jurisdiction of the state and the United States courts with reference to each other are not affected by this section in the slightest degree. The demurrer to the bill is sustained, the temporary injunction dissolved, and the bill dismissed for want of equity.

In *Whitney v. Wilder*, (C. C. A.) 54 Fed., 554, it was held that the prohibition of Section 720 of the Revised Statutes extends to all cases of which the state court first obtains jurisdiction and applies not only to injunctions aimed at the state court itself, but also injunctions issued to parties before the court, *its officers and litigants therein*.

In the body of the opinion it is said:

'While the injunction is directed to the administrator of the succession and estate of Myra Clark Gaines, deceased, restraining him from paying out to the heirs at law of said estate any moneys belonging to it, its purpose and effect are to interfere with the pending administration of the estate in the probate court of the state of Louisiana, which is vested with exclusive jurisdiction of the same and by whose order alone the administrator would be duly authorized to distribute or pay over any money belonging to it. The heirs at law of the deceased petition the probate court that, after the payment of all debts, the property of the estate be turned over to them. The practical effect of the injunction is to stay proceedings under this petition. Should a decree be granted on the petition by the probate court, and the administrator be ordered to comply with the

same, he would be subject to diverse and conflicting decrees,—that of the state court, directing him to distribute the funds of the estate in its custody and under its control according to its decree, and that of the federal court, directing him to refrain and desist from distributing such funds. It was said by this court in the case of *Railway Co. v. Kuteman*, 54 Fed. Rep. 547, (decided at this term), that 'there is not in our system anything so unseemly as rivalry and contention between the courts of the state and the courts of the United States. The framers of our statute laws, foreseeing the evil of such conflicting jurisdiction, have wisely prohibited, in express terms, the granting of injunctions to stay proceedings in any court of a state. Rev. St. Par. 720. *Railway Co. v. Kuteman*, supra. *This prohibition of the statute extends to all cases over which the state court first obtains jurisdiction, and applies not only to injunctions aimed at the state court itself, but also to injunctions issued to parties before the court, its officers or litigants therein.* *Diggs v. Wolcott*, 4 Cranch, 179; *Peck v. Jennings* 7 How. 625; *Dial v. Reynolds*, 96 U. S. 340."

In *American Ass'n. v. Hurst*, (C. C. A.) 59 Fed. 1, it is held:

"Sale of land by a sheriff under an execution issued out of a Kentucky court of equity on a sale bond filed against the sureties thereon is a proceeding within Rev. St. Par. 720, inhibiting injunctions by federal courts, to stay proceedings in state courts, except in certain cases.

The federal court cannot enjoin such a sale, even though the land levied upon belongs to a stranger to the proceedings."

In *Fenwick Hall Co. v. Town of Old Saybrook*, 66 Fed. 389, it is said:

"It is next suggested that the said statute is not applicable in cases where there can be no clash of authority between the state and federal courts.

In this case, however, it appears that the state court has order that the work should be done on or before a certain date. It is no answer to say, in this proceeding, that said order was beyond the jurisdiction of said court. The effect of a permanent injunction, if granted, would be to forbid the defendant town doing the act which the state court had expressly ordered it to do, and would bring about the very result which it was the object of the statute to prevent. The chief argument in opposition to the motion is based upon the claim that under the guise of laying out and constructing a highway, which is of public convenience and necessity, the defendant, the Town of Old Saybrook, is in fact endeavoring to collect an assessment of benefits, so called, not for the layout or construction of said highway but for the purpose of depositing the money thus collected in a savings bank, that the principal and interest may be applied at some future date, not to the construction, but to the repair and maintenance, and possible reconstruction, of this highway. This is, in effect, an argument that this court should enjoin the defendant from obeying it, to do some illegal act. This is not a matter with which this court is concerned, or over which it has jurisdiction. A consideration of the various matters presented in the brief of counsel for the orator of construction of said highway but for the purpose applied at some future date, not to the construction, has failed to show that there is any sufficient ground to support a denial of the motion or to authorize the grant of an injunction. The judgment of the court which first acquired jurisdiction of the cause is binding upon this court, and the rights acquired thereunder cannot be affected by proceedings in another suit by one of the parties in the former cause. Such jurisdiction continues until the judgment is satisfied. 1 Fost. Fed. Prac. 347, et seq. In these circumstances, there being no federal question involved, the granting of an injunction would be in direct violation of the prohibition of the statute. The rule in such cases,

and the reasons therefore, are fully discussed in the following cases: *Hemsley v. Myers*, 45 Fed. 283, 289; *Covell v. Heyman*, 111 U. S. 176; 4 Sup. Ca. 355; *Bank v. Hazard*, 49 Fed. 293. The motion to set aside the restraining order is granted."

It is said by this court in the case of *In re, Chetwood*, 165 U. S. 460:

"The doctrine is firmly established that where the jurisdiction of a court, and the right of a plaintiff to prosecute his suit in it, have once attached, that right cannot be arrested or token away by proceedings in another court, and that where property is actually in the possession of one court of competent jurisdiction such possession cannot be disturbed by process out of another court of concurrent jurisdiction. *Moran v. Sturges*, 154 U. S. 256, and cases cited. And by section 720 of the Revised Statutes, the granting of injunctions to stay proceedings in any court of a state is prohibited in express terms. It is unnecessary here to point out such exceptions or limitations as may exist."

Again, in *Harkrader v. Wadley*, 172 U. S. 148, it is said:

"A court of equity, although having jurisdiction over person and property in a case pending before it, is not thereby vested with jurisdiction over crimes committed in dealing with such property by a party before the civil suit was brought, and cannot restrain by injunction proceedings regularly brought in a criminal court having jurisdiction of the crime and of the accused."

A circuit court of the United States, sitting in equity in the administration of civil remedies, has no jurisdiction to stay by injunction proceeding pending in a state court in the name of a state to enforce the criminal law of such state."

In *Coeur D 'alene Ry. & Nav. Co. et al. v Spaulding*, 35 C. C. A. 295, it is held:

"Rev. St. Par. 720, prohibiting the granting of an injunction by a court of the United States to stay proceedings in any court of a state, except where authorized in bankruptcy proceedings, applies to injunctions directed to parties engaged in proceedings in the state court."

In *Leathe v. Thomas*, 97 Fed 138, it is said:

"The restraining order, the dissolution of which is complained of, enjoined the sheriff from further proceeding with the collection of an execution lawfully issued to him in pursuance of a decree of the circuit court of St. Clair county, in the state of Illinois. It is suggested by counsel for appellees, that under the authority of *Haines v. Carpenter*, 91 U. S. 254, the bill is multifarious and bad on demurrer, and that for this reason the restraining order ought to have been dissolved. We do not consider it necessary to pass upon the question suggested. The order dissolved falls directly within the prohibition of section 720, Rev. St. 1878. This section provides:

"The writ of injunction shall not be granted by any court of the United States to stay any proceeding in any court in any state except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

It is contended that the restraining order does not stay any proceeding in the state court, and that its only purpose is to control the action of a ministerial officer. It is conceded that no court of the United States can lawfully issue any order of injunction to arrest the progress of a suit pending in any court of a state, but it is claimed that this is not a suit pending in the court of a state, inasmuch as the matter has passed into judgment, and that the issuance of the execution by the clerk, and the act of the sheriff in executing it, are to be performed under the mandate of the statute, and

form no part of the proceedings of the court. This contention cannot be maintained. The prohibition of the statute does not extend to proceedings in a court of a state up to and including final judgment only, but to the entire proceedings from the commencement of the suit until the execution issued on the judgment or decree is satisfied. The supreme court, in *Wayman v. Southard*, 10 Wheat. 1, say:

"The jurisdiction of a court is not exhausted by the rendition of its judgment, but continues until the judgment shall be satisfied. Many questions arise on the process subsequent to the judgment in which jurisdiction is to be exercised. It is therefore no unreasonable extension of the words of the act to suppose an execution necessary for the exercise of jurisdiction. Were it even true that jurisdiction could technically be said to terminate with the judgment, an execution would be a writ necessary for the perfection of that which was previously done, and would consequently be necessary to the beneficial exercise of jurisdiction.'

Jurisdiction is the power to hear and determine the subject-matter in controversy in the suit before the court, and the rule is universal that, if the power is conferred to render the judgment or enter the decree, it also includes the power to issue proper process to enforce such judgment or decree, and that jurisdiction continues until that judgment or decree is satisfied. A writ will lie by the party aggrieved to correct errors in the proceedings, judgment or execution in a suit in a court of record. The statute of the state authorizing the issuance and execution of final process is not in denial, and is rather in affirmance of the existence of the jurisdiction of the court until the judgment or decree is satisfied. *Diggs v. Wolcott*, 4 Cranch, 179; *Peck v. Jenness*, 7 How. 612, 625; *Watson v. Jones*, 13 Wall. 679, 719; *Haines v. Carpenter*, 91 U. S. 254; *Dial v. Reynolds*, 96 U. S. 340; *Sargent v. Helton*, 115

U. S. 348, 6 Sup. Ct. 78; *In re Sawyer*, 124 U. S. 200, 220, 8 Sup. Ct. 482; *U. S. v. Collins* 4 Black, 142, Fed. Cas. No. 14, 834; *Wayman v. Southard*, supra; *Bank v. Halstead*, 10 Wheat. 51; *Riggs v. Johnson Co.*, 6 Wall. 166; *Moran v. Sturges*, 154 U. S. 256, 14 Sup. Ct. 1019; *Trust Co. v. Grant-ham*, 27 C. C. A. 570, 83 Fed. 540, and 53 U. S. App. 647. The section above cited is not the only obstacle which prevents the sustaining of the order of injunction. The principle of comity which obtains between courts of concurrent jurisdiction forms a recognized part of their duty. It requires that a subject-matter drawn and remaining within the cognizance of a court of general jurisdiction shall not be drawn into controversy or litigated in another court of concurrent jurisdiction. This principle prevails in all courts of concurrent jurisdiction deriving their powers from a common source. 'A departure from this rule would lead to the utmost confusion and to endless strife between courts deriving their powers from the same sources; but how much more disastrous would be the consequence of such a course in the conflict of jurisdiction between courts whose powers are derived from entirely different sources? *Buck v. Colbath*, 3 Wall. 334, 341. *It is firmly established that the application of this principle forbids the courts of the states from interfering by injunction or otherwise with the mesne or final process of the courts of the United States; and the same principle in like manner forbids the courts of the United States from interfering by injunction or otherwise with the mesne or final process of the courts of the states.* The court, speaking through the chief justice, in *Moran v. Sturges*, 154 U. S. 268, 14 Sup. Ct. 1022, quotes the following from

Mr. Justice Clifford, who spoke for the court in *Riggs v. Johnson Co.*, 6 Wall. 195:

'State courts are exempt from all interference by the federal tribunals, but they are destitute of all power to restrain either the process or proceedings of the national courts.. Circuit courts and state courts act separately and independently of

each other, and in their respective spheres of action the process issued by one is as far beyond the reach of the other as if the line of division between them was traced by land marks and monuments visible to the eye.

For these reasons, without reference to the prohibition of section 720, we should be constrained to affirm the order of dissolution."

In *Mills v. Provident Life & Trust Co.*, 100 Fed. 344, it is held:

Levy and sale under an execution is a 'proceeding' within Rev. St. U. S. Sec. 720, declaring that writ of injunction shall not be granted by a federal court to stay 'proceedings in any court of a state.'

Revised St. U. S. Sec. 720, declaring that writ of injunction shall not be granted by a federal court to stay proceedings in any court of a state, applies where levy and sale under execution on a judgment of a state court is sought to be enjoined, though the writ is asked by one not a party to the action in the state court in which judgment was obtained, who claims that he is sole owner of the land sought to be sold.'

In *Ex parte Young*, 209 U. S. 123, 52 L. Ed. 714, 13 L. R. A. (N. S.) 932, 28 Sup. Ct. Rep. 441, quoted *supra*, and re-quoted here, it is said:

"It is proper to add that the right to enjoin an individual, even though a state official, from commencing suits under the circumstances already stated, *does not include the power to restrain a court from acting in any case brought before it, either of a civil or criminal nature, nor does it include power to prevent any investigation or action by a grand jury. The latter body is part of the machinery of a criminal court, and an injunction against a state court would be a violation of the whole scheme of our government.*"

In *Farmer's Loan & Trust Co. v. Lake St. etc. R. Co.* 177 U. S. 51, 20 Sup. Ct. 568, this court held:

"The possession of the res vests the court which has first acquired jurisdiction with the power to hear and determine all controversies relating thereto, and for the time being disables other courts of co-ordinate jurisdiction from exercising a like power. This rule is essential to the orderly administration of justice, and to prevent unseemly conflicts between courts whose jurisdiction embraces the same subjects and persons.

Nor is this rule restricted in its application to cases where property has been actually seized under judicial process before a second suit is instituted in another court, but it often applies as well where suits are brought to enforce liens against specific property, to marshal assets, administer trusts, or liquidate insolvent estates, and in suits of a similar nature where, in the progress of the litigation, the court may be compelled to assume the possession and control of the property to be affected. The rule has been declared to be of especial importance in its application to Federal and state courts. *Peck v. Jenness*, 7 How. 612, 12 L. Ed. 841; *Freeman v. Howe*, 24 How. 450, 16 L. ed. 981; *Central Nat. Bank v. Stevens*, 169 U. S. 432, 42 L. Ed. 807; 18 Sup. Ct. Rep. 403; *Harkrader v. Wadley*, 172 U. S. 148, 43 L. Ed. 399, 19 Sup. Ct. Rep. 119."

IV.

THE CASES AT BAR ARE PROPER ONES FOR THE ISSUANCE OF WRITS OF PROHIBITION

A writ of prohibition is to prevent the exercise of jurisdiction by a tribunal possessing judicial powers over matters not within its cognizance, or exceeding its jurisdiction in matters of which it has cognizance, and is a proper remedy in a case where the court having jurisdiction assumes to exercise an unlawful

power. It is a remedy provided by the common law against the enroachment of jurisdiction and is the proper remedy in cases where an inferior court exceeds the bounds of its jurisdiction or takes cognizance of matters not arising within its jurisdiction.

Mayo v. James, (Va.) 12 Grat. 17, 23.

People v. Judge of Superior Court of Detroit, (Mich.) 2 N. W. 919.

State v. Ward, 70 Minn. 58; 72 N. W. 825.

Planters Ins. Co. v. Cramer, 47 Miss. 200, 202.

Johnston v. Hunter, 50 W. Va. 52, 53; 40 S. E. 448.

State v. Road Commissioners, 1 Mill (S. Car.) 55, 57; 12 Am. Dec. 569.

Washburn v. Phillips, 43 Mass. (2 Metc.) 296, 298.

Maurer v. Mitchell, 53 Cal. 289, 291.

People v. Board of Election Commissioners, 54 Cal. 404, 406.

Cameron v. Kenfield, 57 Cal. 550, 553.

State v. Young, 29 Minn. 447, 523. 9 N. W. 737, 738.

People v. Fitzgerald, 76 N. Y. Suppl. 865, 868; 73 App. Div. 339.

State v. Evans, 88 Wis. 255, 60 N. W. 433, 435.

SUMMARY.

Inasmuch as we are briefing these cases before the return day, we are not able to address ourselves to the returns of the respondents, and specifically point out the applicability of the law as herein contended for. However, it was recognized by the court and all parties concerned, at the hearing had on the applications for temporary injunctions that all the cases involved the same questions and were alike in character. The matter was presented and argued in the Circuit Court of the United States for the Eastern District of Oklahoma, to Honorable Ralph E. Campbell, on the following stipulation:

"That all seizures referred to in complainants' bill and about which complainants are claiming, were made under and pursuant to search and seizure warrants issued out of the state courts of competent jurisdiction, under and pursuant to the provisions of Sections 5 and 6, Article III, of Chapter 69, of the Session Laws of 1907-08, of the State of Oklahoma. (These are Sections 4184 and 4185 of the 1909 Compiled Laws of Oklahoma), and it is further stipulated and agreed that the relief which the complainants herein are seeking, is that the defendants herein be enjoined from executing such search and seizure warrants so issued by said state courts under and pursuant to Section 5 and 6 Article III. of said Chapter 69, of the Session Laws of 1907-08, of the State of Oklahoma, (Sections 4184 and 4185, of the 1909 Compiled Laws of Oklahoma)' and prosecuting the same in all cases where the execution of such search and seizure warrants necessitates the taking and seizing of intoxicating liquors shipped into the State of Oklahoma by the complainants herein through interstate commerce where such interstate shipments of intoxicating

liquors are in the hands of the interstate carrier and prior to the delivery thereof by the interstate carrier, to the consignee at the point of destination in the State of Oklahoma, under the terms and provisions of the contract of interstate shipment."

No stipulation was filed in the Circuit Court of the United States for the Western District of Oklahoma, but the matter was fully argued and presented to Honorable John H. Cotteral, upon exactly the same theory embodied in the foregoing stipulation, and therefore, we assume that said stipulation fairly states the issue as the same will be presented to this court upon the petition of the State of Oklahoma, and the return of the Respondents made pursuant to the Rule to show cause.

For the reasons stated, and upon the authorities cited, we respectfully urge that the injunctions complained of in the Petitions of the State of Oklahoma are void, as to said State, and its public officers, agents, representatives and employees, and therefore, a writ of prohibition should issue as prayed for in each case.

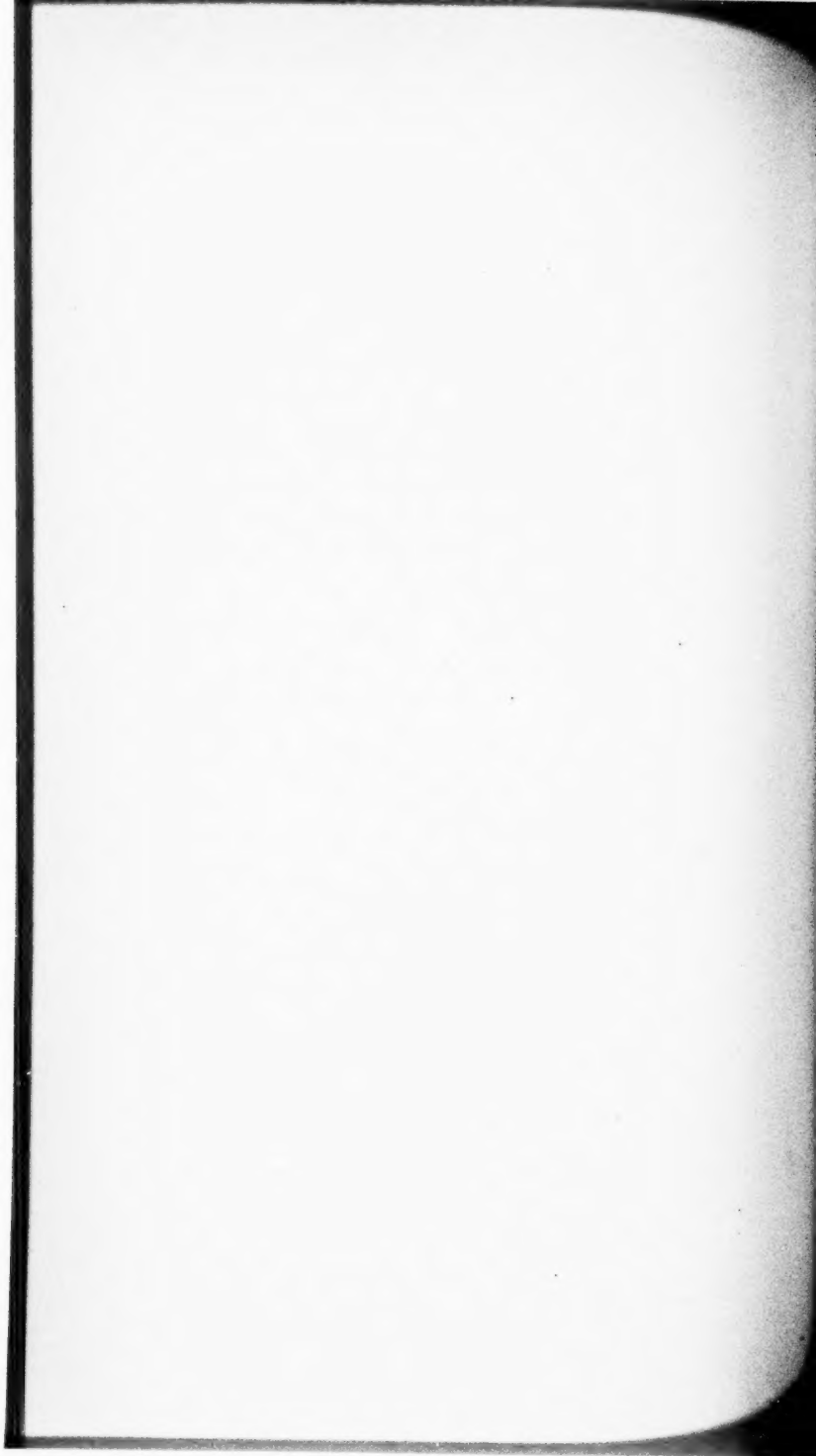
FRED S. CALDWELL.

Attorney for the State of Oklahoma.

JOSEPH W. BAILEY,

Of Counsel.





IN THE
SUPREME COURT
OF THE
UNITED STATES

U. S. Supreme Court, U.
FILED.

APR 4 1910

JAMES H. McKENNA

THE STATE OF OKLAHOMA, one
of the United States of America, by
Charles N. Haskell, Governor and Su-
preme Executive Officer thereof

Petitioner

vs.

THE CIRCUIT COURT OF THE
UNITED STATES FOR THE
WESTERN DISTRICT OF OKLA-
HOMA and JOHN H. COTTERAL,
the District Judge of said District,
Sitting as Judge of said Circuit Court

Respondent

No. 10

ORIGINAL

Brief on Behalf of Atchison, Topeka
& Santa Fe Railway Co. in
Opposition to Relief Sought

J. B. COTTINGHAM,
S. T. BLEDSOE,
Attorneys for A., T. & S. F. Ry. Co.

IN THE
SUPREME COURT
OF THE
UNITED STATES

THE STATE OF OKLAHOMA, one
of the United States of America, by
Charles N. Haskell, Governor and Su-
preme Executive Officer thereof
Petitioner

vs.

THE CIRCUIT COURT OF THE
UNITED STATES FOR THE
WESTERN DISTRICT OF OKLA-
HOMA and JOHN H. COTTERAL,
the District Judge of said District,
Sitting as Judge of said Circuit Court
Respondent

No. 14

ORIGINAL

BRIEF IN OPPOSITION TO RELIEF SOUGHT.

This brief is submitted by leave of court on behalf of
The Atchison, Topeka & Santa Fe Railway Company, here-
inafter referred to as the Atchison Company, in opposition
to relief sought by original petition in cause No. 14 on the
docket of this court, the Atchison Company having invoked
the jurisdiction of the Circuit Court of the United States for
the Western District of Oklahoma in cause No. 276 on the
dockets thereof, said cause being entitled, "The Atchison,

Topeka and Santa Fe Railway Company, Complainant, vs. Fred S. Caldwell, Robert C. Lozier, Chas. C. Post and Roy D. Hoffman, Respondents."

The chief purpose of the petition filed by the relator in the name of the State of Oklahoma is to prohibit the Honorable John H. Cottrel, United States District Judge for the Western District of Oklahoma and sitting as Judge of the Circuit Court of the United States for the Western District thereof from further proceeding in said cause and from granting to the Atchison Company the relief sought therein. It is because of this fact that the Atchison Company has asked permission to submit this brief in opposition to the relief sought in said action.

It is respectfully suggested that an examination of the original petition herein discloses that an effort is made to invoke the jurisdiction of this court to review by writ of prohibition the action of the Honorable John H. Cottrel in granting restraining orders in seven separate causes, in many of which the parties are wholly different and in all of which the complainants are different.

That such joinder is not proper and that this court should not be asked in a proceeding to review by writ of prohibition the several separate and independent acts of the Judge of the Circuit Court of the United States for the Western District of Oklahoma in divers proceedings constituting separate and independent suits.

The Atchison Company respectfully challenges the correctness of the statement of the issues presented to this court for its consideration as made in petition of relator and brief filed in support thereof. It respectfully insists that the issues are to be determined, not from the conclusions and argument contained in the petition, but upon the facts disclosed by the return of the respondent, containing the pleadings filed and the orders entered in said cause.

That this court should not determine the jurisdiction of the Circuit Court of the United States for the Western District of Oklahoma by the meager and uncertain description of the issues involved as stated in the relator's petition.

**BRIEF STATEMENT OF REASONS WHY RELATOR
IS NOT ENTITLED TO RELIEF SOUGHT.**

1. This Court has no original jurisdiction, under Art. 3, of Section 2 of the Constitution of the United States, to entertain a proceeding instituted by a state against a citizen thereof.

2. That the Oklahoma dispensary-prohibition law does not attach to interstate shipments of intoxicating liquors until their arrival at destination and delivery to the consignee, and any officer or person seeking to seize or cause to be seized intoxicating liquors under the provisions of said act, before their arrival at destination and delivery to consignee, acts entirely outside of and beyond the scope of said law and is a naked trespasser, and may be enjoined.

3. That the Supreme Court of the State of Oklahoma, in the case of *State vs. 18 Casks of Beer*, 104 Pac. 1093, and the Criminal Court of Appeals, *McCord vs. State*, 101 Pac. 280, have each construed said statutes and held that the same does not attach to intoxicating liquors until their arrival within the state and actual delivery to the consignee, and such construction is conclusive upon the officers of the state and other persons seeking to enforce the provisions of said act.

4. That if the provisions of the Oklahoma dispensary-prohibition law, commonly known as "The Billups' Bill," is

applicable to interstate shipments of intoxicating liquors prior to the arrival at destination and delivery to the consignee, such statute is void as a regulation of interstate commerce and as unduly interfering therewith.

5. That said Oklahoma dispensary-prohibition law, is so far as it authorizes searches and seizures and confiscation of intoxicating liquors so seized, and especially if the same is applicable to interstate shipment, is violative of the 14th amendment to the Constitution of the United States in that it denies the owners and carriers of said property the due process of law therein guaranteed, denies them equal protection of the law and denies them the liberty of contract and to engage in business guaranteed by the Constitution of the United States.

6. That this Court should not grant the relief sought because there is an adequate remedy for reviewing the action of the Circuit Court of the United States for the Western District of Oklahoma by appeal.

7. That this Court should not grant the relief sought because the Relator is not a party to the proceedings in the Circuit Court of the United States for the Western District of Oklahoma and that no person not a party to the proceedings in the trial court is entitled to relief as a matter of right and the record does not disclose such state of facts as would justify this court in the exercise of any discretion in favor of the Relator.

8. That the relief prayed for by the Relator should be denied because it is sought to review in one action the proceedings in seven different causes involving different parties and issues.

STATEMENT OF ISSUES INVOLVED.

In order to present fully the issues arising in the Circuit Court of the United States in the cause in which the Atchison Company is seeking relief, the bill in this cause is reproduced in full, the return of the District Court not having yet been printed. The bill is as follows, pages referred to being those of Respondents' typewritten return:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

The Atchison, Topeka and Santa Fe Railway Company,

Complainant.

vs.

Fred Caldwell, Charles C. Post, and Roy D. Holcomb,

Defendants.

BILL IN EQUITY.

The Atchison, Topeka and Santa Fe Railway Company, a public service corporation organized under the laws of the State of Kansas, and having its residence therein, brings this Bill of Complaint against Fred Caldwell, Charles C. Post and Roy D. Holcomb, citizens of the State of Oklahoma and inhabitants of the Western District of said State.

THEREFORE your orator complains and says that it is now and for many years past has been a common carrier of goods for hire engaged in the transportation of all classes of goods that may be lawfully transported from one State

into another, as well as from points within the State of Oklahoma to other points within the State, and as such common carrier it has built up an extensive and valuable business.

2. That as a common carrier of goods for hire, it becomes its duty to accept for transportation from points outside of the State to points inside the State intoxicating liquors of various characters, including beer, wine, whiskey, etc.; that it cannot legally refuse because of its position as a common carrier, to receive for shipment and transport from points without the state to points within the state this character of goods in the ordinary course of business; that in the past six months it has had tendered to it and accepted large quantities of this class of goods for shipment from points outside of the State to points inside of the State from which it has received large revenues to-wit, more than the sum of Two Thousand Dollars per annum.

3. That when said goods are tendered to it for shipment it is required by law to issue its bill of lading therefor, whereby it binds itself to transport said goods and deliver the same to the consignee mentioned in said Bill of Lading at the point of destination of said shipment, and that if it fails to so deliver said goods to said consignee so mentioned therein, it becomes liable in damage to the said consignee for the value of said goods and suit may be maintained against it therefor.

4. That owing to the large amount of said class of goods that have heretofore been shipped and that will hereafter be shipped, the value of the business of handling and transporting said goods is worth to this your orator far in excess of the sum of Two Thousand Dollars; that the defendants herein have repeatedly interfered with the business of your orator in its shipments constituting interstate business of intoxicating liquors where the same are consigned from a point outside of the state to a point within the state; have interfered and prevented your orator from making delivery of said goods; that they have lately conspired together and are continuing to conspire together and are now actually preventing by their concerted action the delivery by your orator herein of more than One Thousand Dollars' worth of goods which it has received from points outside of

the State consigned to points within the State and which it has carried to the point of destination and is desirous of delivering.

5. That your orator will continue to be compelled to receive large quantities of this character of merchandise which in the course of the year exceeds in value the sum of many thousands of dollars and the earnings on which will be worth to your orator more than the sum of Two Thousand Dollars; that the defendants herein conspiring together are greatly harassing and interfering with the business of your orator in the transportation and delivery of the character of goods above described and threaten to and propose to continue their interference with your orator's transportation of such intoxicating liquors from points outside the State to points within the State until they have entirely destroyed said business and until they have involved your orator in innumerable law suits with parties who lawfully tendered to it for shipment such character of merchandise, and to whom it is required to issue its Bill of Lading and for whom it is required to transport said merchandise from points without the State to points within the State.

6. That the said defendants conspiring together have been in the habit of entering the freight depots of your orator herein and seizing such intoxicating liquors shipped from points outside of the State to points inside of the State in the ordinary course of business, and preventing the delivery thereof to the consignee; that said defendants are now actually preventing the delivery by your orator to about forty-three consignees of consignments of intoxicating liquors shipped from points outside of the State to points inside of the State in the ordinary course of business, and are about to and will involve your orator in more than forty-three law suits for the value of said intoxicating liquors, for which your orator in the ordinary course of business issued its Bill of Lading for the shipment of the same from points outside of the State to points within the State and that the said defendants propose to and will continue to interfere with such deliveries unless restrained by this Honorable Court until they have involved your orator in thousands of law suits and will have done it irreparable injury, for which it has and can secure no adequate relief at law.

7. Your orator further complains that the said defendants have been in the habit, for the purpose of harassing your orator in the discharge of its duties, of swearing out search warrants or causing the same to be sworn out for the purpose of searching the depots and storage rooms of your orator; that said search warrants are not sworn out in good faith and not in the belief that there is any actual violation of the law or that your orator has in its possession any other intoxicating liquors than those shipped from points outside of the State to points inside of the State in the ordinary course of business and which are in your orator's possession for prompt delivery, but, notwithstanding said facts being well known to the said defendants and with no other purpose than to harass your orator in the transaction of its business, and to disturb its agents and to do it an injury, the said parties continue in open violation of the law, to swear out said search warrants and to maliciously interfere with your orator in the discharge of its duties as a common carrier in the transmission from points outside of the State to points inside of the State of intoxicating liquors.

8. That it is the purpose of said defendants to continue said wrongs and interference until they have completely destroyed the transportation business of your orator in the handling of intoxicating liquors from points outside of the State to points within the State and that the value of said business is far in excess of the sum of Two Thousand Dollars.

9. That the continuation of said course above complained of by your orator will involve your orator in innumerable law suits to which damage in sums far in excess of the sum of Two Thousand Dollars.

10. That your orator respectfully claims that under the Constitution and laws of the United States it lawfully may engage in the transportation in the ordinary course of business of intoxicating liquors from a point without the State to a point within the State and there deliver the same to the consignee named in said Bill of Lading, and that the defendants by their course are seeking to deny said right and to deprive this your orator of the right so guaranteed

to it by the Constitution and laws of the United States and that your orator is entitled to be protected in its said right by the orders and judgment of this Court.

11. Your orator further avers that the defendants one or all of them and particularly the defendant Fred Caldwell, is engaged in the unlawful pursuit of going from point to point in the State and aiding, abetting, assisting, advising and encouraging various divers and sundry persons to unlawfully interfere with the exercise of the duties and privileges of your orator as a common carrier, by then and there causing said persons to interfere and attempt to interfere with the delivery of shipments of intoxicating liquors by your orator to persons resident in this State, which liquors are shipped in the ordinary course of business to such persons from points outside of the State and causing them to go into the depots and cars of your orator and to then and there seize and attempt to confiscate such liquors so shipped from points outside of the State to points inside of the State in the ordinary course of business and which are held ready for prompt delivery by your orator to the consignees thereof; that said defendants are pursuing said course with the full knowledge of the fact that the same is in violation of the law and for the preconceived purpose of harassing your orator herein.

12. That when they secure possession of any intoxicating liquors from your orator under the circumstances above detailed they undertake by some character of proceeding to confiscate the same in violation of the Constitution of the United States with reference to the commerce between States, and the laws of the United States made pursuant thereto.

13. That by reason of the wrongs and injuries already done and by reason of the fact that said wrongs and injuries will be continued in the manner and form heretofore complained of, your orator has been greatly damaged in the excess of two thousand dollars; that it has suffered irreparable injury in the handling of its business; that it has no adequate relief at law from the wrongs and injuries herein complained of, and unless protected by the orders of this Court, it will continue to suffer great and irreparable injury at the

hands of the said defendants and those whom they incite and abett in like conduct.

Your orator further says that it has caused notice to be served upon said defendants except the defendant Holcomb, that it will apply to the Honorable J. H. Cotteral, Judge of the United States District Court for the Western District of Oklahoma at Guthrie at ten o'clock A. M., on the 25th day of August, 1908, for an injunction restraining the said defendants herein from the further commission of the wrongs complained of by your orator herein.

14. Your orator further avers that the said defendants herein claim to be acting under and by virtue of the terms of Article 3 of Senate Bill No. 71, known as the Billups' Bill in the wrongful acts hereinbefore complained of, and that they threaten to continue to invade the depots and cars of your orator and to seize and attempt to confiscate all such shipments of intoxicating liquors received by it from points outside of the State consigned to persons within the State, and to deprive your orator of its right and prevent its performing its legal duty to receive, transport and deliver such shipments; that the said defendants now have in their possession a large amount covering more than forty-three separate shipments of intoxicating liquors shipped from points outside of the State to persons within the State, which they are seeking to confiscate to the great damage and prejudice of your orator and in violation of the Constitution and laws of the United States.

15. Your orator further charges and believes that the defendants herein are not financially able to respond in damages for the large sums of money in which it will be damaged and by reason of the continued wrongs and injuries heretofore practiced and hereafter to be practiced upon your orator herein.

WHEREFORE your orator prays that process be duly issued directed to said defendants commanding them to appear and answer in accordance with the law and the rules of this court, answer under oath being specially waived, and that pending said time that a temporary restraining order followed by temporary injunction be granted restraining

the defendants and each of them from entering the depots or other storage rooms of your orator and taking therefrom intoxicating liquors shipped from points out of the State to persons within the State in the ordinary course of business; that they be restrained from in any wise interfering with your orator in the handling and delivering of intoxicating liquors shipped from points outside of the State consigned to persons within the State and that said parties be enjoined and restrained from inciting other persons or aiding abetting or advising them to do likewise, and that they further be enjoined and restrained from maliciously swearing out a search warrant for the purpose of harassing your orator in the discharge of its duties, and upon the final hearing of this case, that said injunction be made perpetual and your orator be granted such other and further relief as in equity and good conscience it may be entitled to.

THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY,

By COTTINGHAM & BLEDSOE,

Its Attorneys.

This bill is verified in regular form.

Upon the filing of this bill notice was given that an application would be made for temporary restraining order before the Hon. John H. Cotteral, Judge, at Guthrie, on the 26th day of August, 1908 (Respondent's Return, Page —), pursuant to this notice. The Atchison Company appeared by its counsel and the Defendants in said cause by Fred S. Caldwell, their attorney, whereupon the following order was made:

"It is further ordered that in the meantime, and until such application can be made, said Defendants, Fred S. Caldwell, Charles C. Post and Roy D. Holcomb, and each of them, and their agents and employees, be restrained from entering the cars, depots and other storage rooms of the Atchison Company, and taking therefrom intoxicating liq-

uors shipped from points out of the State to persons in the State, and that they be restrained from in any wise interfering with the Complainant in its handling and delivering of intoxicating liquors shipped from points outside the State and consigned to persons within the State and from citing other persons, or aiding, abetting and advising them to do likewise. This order shall not interfere with the seizure of such property made after the actual delivery thereof to the consignee." (Respondent's Return, page —.)

Thereafter, on the 5th day of September, 1908, the case came on to be heard on the application for temporary injunction and "attorneys for the defendant appear and request that said case be postponed until October 15th, and consent that the restraining order heretofore granted be continued in force during said time."

Said request not being objected to by Plaintiff, it is ordered that the hearing on the application for a temporary injunction therein be continued and be set for October 15th at 10 o'clock a. m., at the United States court room at Guthrie.

"It is further ordered that in the meantime and until the further order of the Court, or Judge, the restraining order heretofore granted in this cause be continued in force." (Respondent's Return, page —.)

On the 15th day of October, 1908, the parties appear before the Court pursuant to the order last quoted and the following proceedings were had:

"Now, on this the 15th day of October, 1908, the Plaintiff appearing by Solicitor, S. T. Bledsoe, and the Defendant, Fred S. Caldwell, appearing in his own proper person and for the other Defendants, and request that the said cause be continued, and consented that the temporary injunction be granted in said cause, to remain in force until the further orders of this Court."

Thereupon a temporary injunction was granted in language identical with the temporary restraining order to become effective upon the execution and approval of bond in the sum of \$250.00.

On the 7th day of December the Defendants filed their answer in said cause, which is in substance as follows: (Respondent's Return, page —.)

The allegations in all that part of Complainant's bill preceding paragraph 2 are admitted. Second, the Defendants denied that as a common carrier it was the duty of the Complainant to accept for transportation interstate shipments of intoxicating liquors destined to points in Oklahoma, without regard to purpose, for which they were brought in said state, and averred that the Complainant in that cause should refuse to accept liquors for shipment when such liquors are intended by the persons to whom consigned to be kept, used, or in any manner disposed of in violation to law. It is then alleged that many of such liquors so received for shipment from cities and towns outside the state of Oklahoma, were received and transported into the State of Oklahoma for the purpose of being disposed of in violation to law and that the quantities shipped were sufficient to put Complainant upon notice of such intention.

The Defendants then aver that they have not *knowingly* or *intentionally interfered* with *interstate shipments*, prior to the attaching of the police powers of the State and that the things done and performed by them were done and performed under legal process of some court or tribunal of competent jurisdiction in the State of Oklahoma and in the execution of the police laws and regulations of said State, after such intoxicating liquors had been subject to the exercise thereof, and that if they ever took from Complainant any intoxicating liquors before they became subject to the

police powers of the State, that they did so mistakenly and inadvertently; and within a reasonable time after they became apprised of the true facts they delivered such intoxicating liquors back to Complainant.

Paragraph 4 of the answer denies specifically that the law imposed the burdens upon the Complainant in said cause to receive and carry intoxicating liquors from points outside of the State to points inside the State, with the exceptions only of "such as are not intended by the person, or persons, to whom delivered at the point of destination to be used in violation of the laws of such State."

Then follows denials of paragraphs 6, 7, 8, 9, and 10 of Complainant's bill.

The denial contained in Paragraph 11 is characteristic of the denials throughout the answer in that it denies that they committed the acts charged prior to the attaching of the police powers of the State of Oklahoma to such shipments of intoxicating liquors. There is no denial of the fact of the seizure of intoxicating liquors before their delivery to the consignee and while in the possession of the carrier and held for delivery in the ordinary course of business. The force and effect of the allegations in the bill are sought to be avoided by the charge that the seizure is not made until the liquors become subject to police laws of the State. These statements do not amount to a denial of the allegation that they do cause to be sworn out search warrants for the seizure of such interstate shipments of intoxicating liquors while the same are in the possession of carriers and before delivery to the consignee. (Respondent's Return, page —.)

There was also filed a separate answer of the Defendant Caldwell containing substantially the same denials as those contained in the joint answer.

Attached to and constituting a part of the answer of the Defendant Caldwell, was what he styled a cross-bill, in which was set out certain provisions of the enabling act, under which the State of Oklahoma was admitted into the Union, with reference to the sale of intoxicating liquors, and certain provisions of the Oklahoma Constitution, adopted pursuant to the provisions of the said enabling act, and sections 1, 2, 3, 5, 6, 14, 19a, 20, and 24, of Article 3, of what is therein referred to as Senate Bill No. 61, being the law under which the State of Oklahoma is engaged in the disposition and sale of intoxicating liquors and prohibiting the citizens thereof from engaging in a like practice and prescribing a procedure for the seizure and confiscation of intoxicating liquors kept in the State for the purpose of disposition in violation of the terms of the Act.

It is further averred that the Defendant Caldwell, was, pursuant to section 24, of Art. 3 of said act, appointed counsel to the Governor and had duly qualified and was acting as such.

It was further averred that they were numerous persons in the State of Oklahoma, set forth in the list entitled "Exhibit A," who had received and paid for the special tax required by liquor dealers of the United States, and that some of the intoxicating liquors referred to were shipped to such parties. (Respondent's Return, page —.)

That the principal volume of the business of Complainant consisted in the transportation of liquors "from points outside the State of Oklahoma to points inside said State, to be there delivered to and placed in the possession of persons such as those named in Schedule A, whose sole and only purpose is to use and dispose of same in violation of the laws of State hereinabove set out, including said Act of Congress commonly known and designated "The Enabling Act." Wherefore, your Orator says that by the per-

move the same therefrom, and from issuing its bill, or bills, of lading covering shipments of such liquors or compounds, and in which the name of the actual consignee does not appear, and from issuing more than one bill of lading for any shipment of such liquors or compounds, which are to go forward on the same way-bill and are intended for the same consignee. (Respondent's Return, page —.)

On the 11th day of December, 1908, the Complainant, the railway company, specifically demurred to the said cross-complaint and the several paragraphs thereof. (Respondent's Return, page —.)

On the 12th day of June, 1909, this demurrer came on to be heard and was by the Court sustained. (Respondent's Return, page —.)

On the 19th day of June, 1909, the Complainant filed separate replications to the joint answer of the Defendants and the separate answer of Fred S. Caldwell. The replication being the general equity form which put in issue every allegation contained in the answer. (Respondent's Return, page——.)

This was the condition of the record at the time of the filing by the Relator of the petition in this Court. Therefore, so far as proceedings instituted by The Atchison Company are concerned, no question of jurisdiction has ever been raised in the Circuit Court of the United States for the Western District of Oklahoma. The restraining order and temporary injunction have each been assented to by the parties to the suit. The jurisdiction of the court in said action has been invoked by the Defendants themselves to grant a restraining order against the Complainant. No demurrer to the bill, plea to the jurisdiction or motion to dissolve the temporary restraining order or temporary injunction has ever been presented.

Under these circumstances, it is respectfully submitted

that so far as The Atchison, Topeka & Santa Fe Railway Company is concerned, and without regard to the merits of the controversy joined, that the rule should be discharged.

ARGUMENT.

In presenting the questions involved we will follow the order in which they are presented in the brief of counsel for the Relator.

It is suggested that authority for the action of the parties defendant, in one or more of the actions referred to in the petition of the Relator, is found in sections 3449, Revised Statutes of the United States; sections 238-39-40 of the Federal Penal Code (36 Stat. 1136-7) and by what is known as the Pure Food and Drug Act (34 Stat. 768).

With reference to this contention, it is deemed sufficient to say that neither of said acts enlarge the jurisdiction or authority of the State of Oklahoma, or of any of its officers or courts. Nor does it appear that in any of the causes the parties are seeking injunctions restraining interference with goods transported in violation of any of said statutes.

So far as the cause instituted by the Atchison Company is concerned, it was instituted long prior to the time at which the Penal Code went into effect.

Some of the acts referred to contemplate the furnishing of information by the State to the Federal officers but none of them contemplate or authorize action by State authorities.

THIS BEING A CONTROVERSY BETWEEN A STATE
AND A CITIZEN THEREOF, THIS COURT
IS WITHOUT JURISDICTION.

This is an original proceeding by the State of Oklahoma against John H. Cotteral who is District Judge of the District Court of the United States for the Western District of Oklahoma and therefore a citizen of the State of Oklahoma. The State of Oklahoma is not a party to the proceedings sought to be prohibited. It can therefore invoke the jurisdiction of this court only and to the same extent it could if the proceedings were against any other citizen of the State of Oklahoma than the Honorable John H. Cotteral, who is District Judge for the Western District of the said State.

Under Article 3, Section 2 of the Constitution of the United States, the original jurisdiction of this court is limited " * * * to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State, * * * "

We quote as follows from the opinion in the case of California v. Southern Pacific R. Co., 157 U. S. 229, 258:

"By section 13 of the Judiciary Act of September 24, 1789, c. 20, 1 Stat. 73, it was provided 'that the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, and except also between a State and citizens of other States or aliens, in which latter case it shall have original but not exclusive jurisdiction. In all the other cases above mentioned the Supreme Court shall have appellate jur-

risdiction. * * * This was carried forward into section 687 of the Revised Statutes. Under the Constitution of the cases in which a State may be a party are those between two or more States; between a State and citizens of another State; between a State and foreign States, citizens, or subjects; and between the United States and a State, as held in *United States v. Texas*, 143 U. S. 621. By the Constitution and according to the statute this court has exclusive jurisdiction of all controversies of a civil nature where a State is a party, but not of controversies between a State and its own citizens, and original but not exclusive jurisdiction of controversies between a State and citizen of another State or aliens." (Page 258.)

* * * * *

"If, by virtue of the subject-matter, a case comes within the judicial power of the United States, it does not follow that it comes within the original jurisdiction of this court. That jurisdiction does not obtain simply because a State is a party. Suits between a State and its own citizens are not included within it by the Constitution; nor are controversies between citizens of different States.

"It was held at an early date that Congress could neither enlarge nor restrict the original jurisdiction of this court, *Marbury v. Madison*, 1 Cranch. 137, 173, 174, and no attempt to do so is suggested here. The jurisdiction is limited and manifestly intended to be sparingly exercised, and should not be expanded by construction. What Congress may have power to do in relation to the jurisdiction of Circuit Courts of the United States is not the question, but whether, where the Constitution provides that this court shall have original jurisdiction in cases in which the State is plaintiff and citizens of another State defendants, that jurisdiction can be held to embrace a suit between a State and citizens of another State and of the same State. We are of the opinion that our original jurisdiction cannot be thus extended, and that the bill must be dismissed for want of parties who should be

joined, but cannot be without ousting the jurisdiction."
(Pages 261-2.)

JUDICIAL POWER AS DISTINGUISHED FROM
POLICE POWER AS AUTHORITY FOR THE
VARIOUS PROCEEDINGS AS AGAINST
WHICH INJUNCTIONS HAVE
BEEN SOUGHT.

In view of the repeated decisions of this Court involving the authority of the State to control or seize interstate shipments of intoxicating liquors prior to their delivery to the consignee, counsel for petitioner concede that in the cases at bar that the liquors are not subject to the police power of the State until actually delivered to the consignee. It is insisted, however, that there is a distinction between the police and judicial power of the State, and that what may not be done directly may be done indirectly under the guise of alleged judicial proceedings.

It is further insisted that every interstate shipment of intoxicating liquors, regardless of the quantity, or to whom consigned, is subject to seizure upon the character, of judicial process prescribed by what is known as "The Billups Bill," or "Enforcement Act," for the purpose of determining, before the delivery to the consignee, whether or not after delivery it is intended to be used or disposed of in violation of the laws of the State. This is but an indirect method of attempting to exercise the police power through alleged judicial proceedings.

Certainly the only power vested in the State of Oklahoma that it could ever be claimed would authorize the

seizure and condemnation of intoxicating liquors is the police power and its exercise for the protection of the morals, health, safety and comfort of the people of the State. That there attaches to intoxicating liquors such peculiar character as authorizes the exercise of the judicial power of the States, seems to us absurd. This Court has not, in dealing with the subject of intoxicating liquors, drawn any distinction between police and judicial powers.

In the case of *Rhodes vs. Iowa*, 170 U. S., 412, 426, quoting with approval from the case of *In re Rahrer*, 140 U. S. 545, 552, it will be noted that this Court did not draw the distinction herein insisted upon between judicial and police powers. The language being: "We think that interpreting the statute in the light of all its provisions, it was not intended to and did not cause the *power* of the State to attach to an interstate commerce shipment whilst the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery there to the consignee * * *."

The word "power" is apparently here used in its generic sense, including every form of power that may be exercised by the State.

The case of *Rhodes vs. Iowa*, *supra*, involved the conviction of Rhodes, the agent of the Burlington & Western Railway Company for transporting liquors within the state, he having removed an interstate shipment of liquors from the depot platform to the freight house of the railway company at Brighton, Iowa, the box containing the same being marked "groceries" and consigned to "William Horn."

The evidence established the fact, however, that Horn probably knew the box contained liquors. This Court stated the question involved in that case in the following language:

"The sole question presented for consideration is, whether the statute of the State of Iowa can be held to apply to the box in question whilst it was in transit from its point of shipment, Dallas, Illinois, to its delivery to the consignee at the point to which it was consigned. That is to say, whether the law of the State of Iowa can be made to apply to a shipment from the State of Illinois before arrival and delivery of the merchandise, without causing the Iowa law to be repugnant to the Constitution of the United States." (414.)

It is insisted in the case at bar that the law of the State of Oklahoma can be made to apply to an interstate shipment before the arrival and delivery of such shipment without causing the Oklahoma law to be repugnant to the Constitution of the United States. This Court, in concluding the opinion in *Rhodes v. Iowa*, *supra*, uses the following language:

"It follows from this conclusion that as the act for which the Plaintiff in Error was convicted, and which consisted in moving the goods from the platform to the freight warehouse, was a part of the interstate commerce transportation and was done before the law of Iowa could constitutionally attach to the goods, the conviction was erroneous, and the judgment below is, therefore, reversed." (Page 426.)

In the case of *Vance v. Vandercook*, 170 U. S. 438, 455, this court held the prohibition law of the State of South Carolina unconstitutional, in so far as it required the communication of the intention to ship to a state chemist and the securing of authority from the officers of the State to make such shipment because such burdens were wholly incompatible with and repugnant to the Constitution of the United States.

Mr. Justice White, speaking for the Court, uses this language:

On the face of these regulations, it is clear that they

subject the constitutional right of the non-resident to ship into the State and of the resident of the state to receive for his own use, to conditions which are wholly incompatible with and repugnant to the existence of the right which the statute itself acknowledges. The right of the citizen of another state to avail himself of interstate commerce cannot be held to be subject to the issuing of a certificate by an officer of the State of South Carolina, without admitting the power of that officer to control the exercise of the right."

"But the right arises from the Constitution of the United States; it exists wholly independent of the will of either the law-making or the executive power of the State; it takes its origin outside of the State of South Carolina, and finds its support in the Constitution of the United States. Whether or not it may be exercised depends solely upon the will of the person making the shipment and cannot be in advance controlled or limited by the action of the State in any department of its government."

If the right of a citizen of Oklahoma or a non-resident of the state thereof to make or receive an Interstate shipment must, or of a carrier to transport the same before the termination of the interstate transportation be submitted to numerous and divers inquiries upon information of any one of the officials of the state or any one of the thousands of informers who may be ready to make an affidavit, the right will be very seriously impaired if not wholly destroyed.

The case of *Adams Express Company vs. Kentucky*, 206, U. S. 129, 135, involved the conviction of the Express Company for a violation of the prohibition laws of the State of Kentucky. We quote as follows from the opinion of the Court in that Case:

"The testimony showed that the package, containing a gallon of whisky, was shipped from Cincinnati, Ohio, to George Meece, at East Bernstadt, Kentucky. The transaction was therefore one of interstate commerce, and within the exclusive jurisdiction of Congress. The Kentucky statute is obviously an attempt to regulate such interstate commerce.

This is hardly questioned by the Court of Appeals, and is beyond dispute under the decisions of this court.

"In *Vance vs. Vandercook Company* (No. 1), 170 U. S., 438, 444, Mr. Justice White, delivering the opinion of the court, said:

"Equally well established is the proposition that the right to send liquors from one State into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and, hence, that a state law which denies such a right, or substantially interferes with or hampers the same, is in conflict with the Constitution of the United States.

"In *Rhodes vs. Iowa*, 170 U. S. 412, 426, it was held that the Wilson Act, 'was not intended to and did not cause the *power* of the State to attach to an interstate commerce shipment, whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee.' "

Under the Constitution of the State of Oklahoma the provisions of the Billups Bill do not apply to interstate shipments until after arrival within the state and actual delivery to the consignee. This proposition has, in the judgment of counsel for railway company been absolutely foreclosed by the Supreme Court and the Court of Criminal Appeals of the State of Oklahoma.

The Supreme Court of the State said, in the case of *Swedes vs. State*, 1st Oklahoma Criminal Rep. 245: 99 Pac. 804, that:

"Under sub-division 3, section 8, Art. 1, Constitution of the United States, commonly referred to as the 'Interstate Commerce Clause, * * * a resident of one state has the right to have shipped to him from another state, alcoholic liquors, when ordered by him for his and his family's use and to keep the same for such use, and the State cannot, under its police power, enact laws so as to substan-

tially hamper or burden such constitutional right to have such shipment made and to receive and retain the same for personal use.'"

This same Court re-affirmed this doctrine in the *State vs. 18 Casks of Beer*, 104 Pac. 1093-1100, and after reviewing the various decisions of this Court upon the subject of the right to regulate or seize intoxicating liquors shipped from places outside of such states, uses the following language:

"When actual possession passed from the carrier to the consignee, the consignee accepting the 120 casks of beer and acknowledging possession, that constituted a delivery, and when delivery was consummated, the State laws attached."

Under section 4753, Wilson's Statutes of Oklahoma, 1903, a syllabus of the points of law decided is required to be prepared in writing by the judge delivering the opinion, and the same must be confined to points of law arising upon the facts in the case that have been determined by the Court. Such syllabus is required to be submitted to the Judges concurring therein for reversal before filing.

The syllabus of a case, under the laws of Oklahoma, expresses not only the judgment of that member of the Court which prepared the opinion, but represents the judgment of the entire Court, or all the members concurring in the opinion upon the questions of law applicable to the facts in the case. The first paragraph of the syllabus in the case of *State vs. 18 Casks of Beer*, *supra*, is as follows:

"A citizen of Oklahoma having purchased intoxicating liquors in another state and caused the same to be transported to him as consignee in this state by an interstate shipment, the laws of this state by virtue of the police power (Act Cong. Aug. 8, 1890, c. 728, 26 Stat. 313; [U. S. Comp. St. 1901, p. 3177] attach immediately after the

consummation of the delivery by the carrier to the consignee."

There is in the State of Oklahoma another Court of last resort, to-wit: The Criminal Court of Appeals. That Court has construed this particular statute, and its decision is reported in the case of *McCord vs. State*, 101 Pac. 280. There was involved in that case the conviction of Josh McCord for having possession of intoxicating liquors with intent to sell the same in violation of the prohibition laws of the State. It will appear from paragraph 2 of the syllabus that the State is engaged in the liquor traffic for purposes of profit. It is not, therefore, in position to very severely condemn its citizens who simply undertake to do what the State does but what the state has undertaken to prohibit them from doing.

Paragraph 6, 7, and 8 of the syllabus in the last mentioned case are as follows:

6 Par. The clause in Section 1, art. 3, c. 69, p. 603, of the Session Laws of 1908, which reads, "or to have the possession of any such liquors with the intention of violating any of the provisions of this act," has no application to interstate shipments until there has been a delivery of an interstate shipment of said liquors at their destination.

7 Par. Carrying or conveying intoxicating liquors from the railroad station to the home of the consignee is a part of the interstate commerce transportation, when they were shipped from another state, and is not a violation of the provisions of the prohibitory law of this state.

8 Par. The States are not authorized to declare when interstate shipments of liquor shall become subject to state control. Congress has the exclusive power to fix the time when such shipments lose their interstate character and become subject to state control.

This case contains a most interesting discussion of the limitation upon the authority of the State and the time when, under the particular law here involved, the laws of the State attach.

Therefore, under the construction given to this particular statute by the Supreme Court of the State of Oklahoma in the cases of *Swedes vs. State*, 99 Pac. 804, and *State vs. 18 Casks of Beer*, 104 Pac. 1193, and by the Criminal Court of Appeals, in the case of *McCord vs. the State*, 101 Pac. 280, the laws of the State of Oklahoma do not attach to interstate shipments until after their arrival within the state and their delivery to the consignee at destination. Any officer, citizen of the State, or other person who, under authority of the State, undertakes, either directly or indirectly, to interfere with the transportation of such intoxicating liquors before such arrival at the destination and delivery to the consignee, acts without authority of law and is simply a trespasser.

The Supreme Court of the State, in case of *State vs. 18 Casks of Beer*, *supra*, treated the proceedings as one under the police power and not an exercise of that peculiar kind of judicial power so often referred to in brief of counsel for Relator.

The particular language of the Criminal Court of Appeals in the *McCord* case, quoted by the Supreme Court of Oklahoma, in the case of *State vs. 18 Casks of Beer*, 104 Pac. 1095, is as follows:

"We are constrained to hold that the jurisdiction of the state does not take effect until said shipments reach their destination at the home or place of storage of the consignee. Then, but not until then, can the state test the question of unlawful possession; and in this case the constructive possession of the defendant of the liquors in question was not a violation of any of

the provisions of the prohibition law?" The cases of *Scott vs. Donald*, 165 U. S. 58, 17 Sup. Ct. 265, 41 L. Ed. 632, *Vance vs. W. A. Vandercook Co.*, 170 U. S. 438, 18 Sup. Ct. 674, 42 L. Ed. 1100, *Adams Express Co. vs. Kentucky*, 206 U. S. 129, 27 Sup. Ct. 606, 51 L. Ed. 987, *Heyman vs. Southern R. R. Co.*, 203, U. S. 270, 27 Sup. Ct. 104, 51 L. Ed. 178, *Schwedes vs. State*, 1 Okla. Cr. 245, 99 Pac. 804, *High, et al. vs. State* (Cr. App.) 101 Pac. 115, and *Hudson vs. State*, 101 Pac. 275, are cited in support of the *McCord Case*.

It will be noticed that the Criminal Court of Appeals says, speaking with reference to delivery to the consignee:

"Then, but not until then, can the State test the question of unlawful possession."

The only difference between the opinion of the two courts is as to the time when the delivery is so completed so as to bring the commodity within the reach of the state laws. The Supreme Court of the State say that when there is an actual delivery of possession by the transportation company and an actual taking of possession by the consignee, that the state laws attach. The Criminal Court of Appeals say that such laws do not attach until the end of the journey is reached and that the transportation from the depot to the residence or place of business is a part of the interstate transportation.

It is not necessary to consider the differences of opinion between these Courts upon the subject. Both courts have decided that the state law does not attach until delivery to the consignee.

Under the provisions of the particular statute involved, as construed by the courts of last resort of the state, they do not follow the officers in the seizure of interstate shipments before delivery to the consignee. In making such seizures they are without law or authority and are simply trespassers engaged in a continuous wrong resulting in

grave injury as against which the railroad companies have no relief except by injunction.

THE PROCEEDINGS IN THE CIRCUIT COURT
OF THE UNITED STATES FOR THE WESTERN DISTRICT
OF OKLAHOMA ARE NOT AGAINST THE
STATE OF OKLAHOMA.

The bill in the Circuit Court of the United States for the Western District of Oklahoma, filed by the Atchison, Topeka & Santa Fe Railway Company simply charges continued, repeated and unlawful trespasses by the Defendants therein, Fred Caldwell, Charles C. Post and Roy D. Holcomb, and that their trespasses are resulting in irreparable damage to the Atchison Company, as set forth in detail in said bill. Paragraph 11 of said bill is as follows:

"11: Your orator further avers that the defendants one or all of them and particularly the Defendant Fred Caldwell, is engaged in the unlawful pursuit of going from point to point in the state and aiding, abetting, assisting, advising and encouraging various, divers and sundry persons to unlawfully interfere with the exercise of the suits and privileges of your orator as a common carrier, by then and there causing said persons to interfere and attempt to interfere with the delivery of shipments of intoxicating liquors by your orator to persons resident in this State, which liquors are shipped in the ordinary course of business to such persons from points outside of the State and causing them to go into depots and cars of your orator and to then and there seize and attempt to confiscate such liquors so shipped from points outside of the State to points inside of the State in the ordinary course of business and which are held ready for prompt delivery by your orator to the consignee thereof; that said defendants are pursuing said course with the full knowledge of the fact that the same is in violation of the law and for the preconceived purpose of harrassing your orator herein."

It cannot possibly be contended that under the allegations of this bill the State of Oklahoma is a party to the proceeding, or even remotely interested in having trespasses committed upon the interstate shipments of the Atchison Company. It is true that the Defendants, in their answer, seek to raise an issue as to their authority to commit the trespasses complained of, by asserting that the Defendant, Caldwell, is counsel to the Governor, under the provisions of the Oklahoma Dispensary-Prohibition Act, and that it is his duty to enforce the provisions thereof. It is conceded by counsel for Relator on page 3 of this brief, that if the law under which he claims he causes such seizures to be made, is unconstitutional and void; that all proceedings thereunder may be enjoined.

That such law, if at all applicable to interstate shipments before their arrival at destination and delivery to the consignee, is unconstitutional and void, has been considered in a previous part of this brief. In addition to that discussion, we desire to again call the Court's attention to the authorities there cited and some additional authorities.—

- Rhodes vs. Iowa, 170 U. S., 412;
- Vance vs. Vandercook, 170 U. S., 438;
- Express Company vs. Iowa, 196 U. S., 133-147;
- Heyman vs. Southern Railway Co., 203 U. S., 275;
- Adams Express Co., vs. Kentucky, 206 U. S. 135;
- Leisy vs. Hardin, 135 U. S., 100;
- Bowman vs. Chicago & N. W. Ry. Co., 125 U. S., 465;
- Scott vs. Donald, 165 U. S., 107;
- Adams Express Co. vs. Kentucky, 214 U. S. 218;
- L. & N. Railway Co. vs. Cook Brewing Co., 172 Fed. 117;
- Davis Hotel Co. vs. Platt, 172 Federal, 775;
- Crescent Liquor Co. vs. Platt, 148 Fed. 894;
- State vs. 18 Casks of Beer, 104 Pac. 1093;
- High et al. vs. State, 101 Pac. 115;
- McCord vs. State, 101 Pac. 280.

The Oklahoma Dispensary-Prohibition law, as construed by the Supreme Court of the State of Oklahoma, in the case of the State vs. 18 Casks of Beer, 104 Pac. 1093, does not apply to intoxicating liquors until their arrival at destination and delivery to the consignee. To the same effect are the cases of High et al vs. State, 101 Pac. 115, and McCord vs. State, 101 Pac. 280.

That an injunction may be granted to protect the property rights of a person against the enforcement of an unconstitutional state statute, and that said injunction may be addressed to the persons whose duty it is to enforce the same, has been definitely settled by this court in *Ex parte Young*, 209, U. S. L. 23.

See also:

- Davis vs. Gray, 16 Wall. 203, 220;
- Virginia Coupon cases, 114 U. S., 270, 296;
- United States vs. Lee, 106 U. S., 196;
- Tindall vs. Wesley, 167 U. S., 204;
- Pennoyer vs. McConnaughy, 140 U. S., Pages 1 and 9;
- Reagan vs. Farmers' Loan & Trust Co., 154 U. S. 362;
- Union Pacific Co. vs. Mason City Co., 199 U. S., 160;
- Smyth vs. Ames, 169 U. S., 466;
- Prout vs. Starr, 188 U. S., 537;
- McNeill vs. Southern Railway Co. 202 U. S., 543-559;
- Mississippi Railroad Commission vs. Illinois &c. 203 U. S., 335-340;
- Kansas Natural Gas Co. vs. Haskell, 172 Pac. 545;

The State not being a party defendant and it not clearly appearing that the rights asserted by the defendants are the rights of the State or that the State is in fact, though not in name, a party defendant, the question of whether the actual defendants bear such relation to the State as would

justify the contention that the suit is one against the State within the provisions of the 11th amendment to the Constitution, is one which belongs to the merits rather than to the jurisdiction.

Sculley vs. Bird, 209 U. S., 481, 487;

Ill. Central Railway Co. vs. Adams, 180 U. S.
28-35.

It is submitted that under the return of the Respondent in this cause that there is no reason whatever for contending that the suit instituted by the Atchison, Topeka & Santa Fe Railway Company vs. Caldwell, et al., is a suit against the State.

Every argument urged in support of said contention has been foreclosed by the decisions of this Court.

THE EFFECT OF THE INJUNCTION COMPLAINED OF IS NOT TO STAY PROCEEDINGS IN THE STATE COURTS IN VIOLATION OF SECTION 720 OF THE REVISED STATUTES OF THE UNITED STATES.

The Atchison Company did not ask, and the court did not grant, a restraining order against the enforcement of any order, judgment or decree of the State Court. The parties defendant in that action were not officers of any court, and were not, so far as the record discloses, the officers of any county authorized to execute the process of any court under the Oklahoma Dispensary-Prohibition law. From the allegations in the bill, it appears that the defendants therein were seeking to, by divers trespasses, interferences, etc., to destroy the interstate carrying business of intoxicating liquors. However, if the law under which any officer of the State of Oklahoma is acting is unconstitutional and void, such officer, regardless of his position, would be a trespasser and liable for the wrongs committed in the attempted enforcement of such void law.

This Court said, speaking through Mr. Justice Field, in *Norton vs. Shelby County*, 118 U. S. 425, that:

"An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation as inoperative as though it had never been passed."

This Court said, in case of *Ex parte Young*, 209 U. S. 123, speaking through Mr. Justice Peckham:

"The various authorities we have referred to furnish ample justification for the assertion that individuals, who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the state, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected by an unconstitutional act, violating the federal Constitution, may be enjoined by a federal court of equity from such action."

Therefore, if the act is unconstitutional and void, or does not attach, the Circuit Court of the United States has jurisdiction to enjoin the enforcement, or threatened proceedings of either a civil or criminal nature, which may be instituted under such constitutional act.

The general doctrine on this subject, as stated in *High on Injunctions*, 4 edition, Vol. 2, Sec. 1308, is as follows:

"The preventive jurisdiction of equity extends to the acts of public officers, and will be exercised in behalf of private citizens who sustain such injury at the hands of those claiming to act for the public as is not susceptible of reparation in the ordinary course of proceedings at law. And it may be stated as a general rule, that when public officers, under color and claim of right, are proceeding to impair either public or private rights, or when their proceedings will result in serious injury to private citizens, without any cor-

responding benefit to the public, or when the aid of equity is necessary to prevent a multiplicity of suits an injunction will be allowed."

We also quote as follows from section 1309 from the same author:

"In applications for relief by injunction against the acts of public officers the determining point is, ordinarily, whether they are acting within the scope of their authority, or whether they are transcending that authority. And while equity will not interfere while such officers are acting within the authority conferred upon them by law, to determine whether their action is good or bad, yet if they assume powers over property which do not belong to them, and infringe upon or violate the rights of citizens under pretense of such assumed authority, equity has jurisdiction to interfere for the protection of the citizen."

The case of *Schully vs. Bird*, 209 U. S. 481, was an appeal from an order dismissing the bill of appellants for want of jurisdiction. The bill sought to enjoin certain acts of the appellee who was Dairy and Food Commissioner of the State of Michigan and who, it was alleged, under cover of his office, was injuriously affecting the reputation and sale of certain manufactured products of appellants. The Court dismissed the bill upon his own motion, without notice, on the ground that the suit was one, in effect, against the State of Michigan within the meaning of the eleventh amendment to the Constitution of the United States. The dismissal was entered upon the authority of *Arbuckle vs. Blackburn et al.*, 113 Fed. 616, cited and relied upon by counsel for Relator as *the one* case directly in point.

Apparently the appellee as food commissioner had begun a crusade against the manufactured products of the appellants for the purpose of driving them out of the markets of Michigan, if possible. The wrongs complained

of were done under cover of office by the appellee, and for this reason it was insisted the proceeding was one against the state. The appellee in that cause was committing sundry and divers trespasses upon the rights of the appellant under what he claimed to be the provisions of the Pure Food and Drug Act of Michigan.

The action of the Circuit Court in dismissing the bill was reversed. The third paragraph of the syllabus apparently correctly states the conclusion reached by the Court:

"A suit by a citizen of another state to stay a state officer from improperly enforcing a state statute where no criminal prosecution has been commenced held in this case not to be an action against the state within the meaning of the eleventh amendment."

The case of Texas and Pacific Railway Co. vs. Kuteman, 54 Fed. 547, involved the dismissal of a suit instituted in the Circuit Court for the Eastern District of Texas to restrain R. B. Kuteman from prosecuting a number of suits in the state court. The dismissal was upon the theory that to grant the relief would violate section 720 of the Revised Statutes of the United States.

The purpose of the suit, as stated by Judge McCormack, who rendered the opinion, was as follows:

"Manifestly the chief purpose was to prevent the further institution of the many threatened suits and, if the plaintiff sought relief as to suits already brought, as well as to suits threatened, the two purposes and prayers are not so united or dependent that they must stand or fall together. * * * In Fisk vs. Railway Co., 10 Blatchf. 520, Judge Blatchford says: 'The provisions of section 5 of the act of March 2, 1793, that a writ of injunction shall not be granted to stay proceedings in any court of a state, has never been held to have, and cannot properly be construed to have, any application except to proceedings commenced in a state court before the proceedings are commenced in

the federal court; otherwise, after suit brought in a federal court, a party defendant could, by resorting to a suit in a state court, defeat, in many ways, the effective jurisdiction and action of the federal court after it had obtained full jurisdiction of person and subject-matter. Moreover, the provision of the act of 1793 (now section 720, Rev. St.) must be construed in connection with the provision of section 14 of the act of September 24, 1789, that the federal courts shall have power to issue all writs which may be necessary for the exercise of their respective jurisdictions. 1 U. S. St. at Large, pp. 81, 82.' Section 716, Rev. St. U. S. This is cited with approval by Judge Field in *Sharon vs. Terry*, 36 Fed. Rep. 365. It is in harmony with *French vs. Hay*, 22 Wall. 250, and *Dietzsch vs. Huidekoper*, 103 U. S. 494, and appears to be substantially conceded by the terms of appellee's first proposition. This being so, as to all suits threatened, no proceeding having begun as to them in any court prior to the filing of appellant's bill, the exhibiting the bill in the circuit court, if jurisdiction otherwise is shown, gives that court 'a first-acquired federal jurisdiction,' to which section 720 cannot reasonably be applied. Nor does it make the case different that the only relief the appellant needs or seeks is a permanent injunction against the institution of a multiplicity of suits which the appellee is threatening to bring in a state court. When the United States courts acquire jurisdiction of the parties and of the subject-matter, so far as acquired, the jurisdiction is complete."

In the case of *In re Beine*, 42 Fed. 545, Judge Caldwell discharged certain prisoners on *habeas corpus*, who were convicted under the Kansas statute for violation of the Kansas prohibitory law on the ground that such convictions were violative of the Federal Constitution, which reserves to the Government of the United States the exclusive regulation of interstate commerce.

In the subsequent case of *Schandler Bottling Co. vs.*

Welch, 42 Fed. 561, Welch, county attorney of Shawnee county, Kansas, and Wilkerson, sheriff, were enjoined from instituting proceedings very much of the character of those involved in this controversy.

It is respectfully insisted that no injunction was granted staying the execution of any process issued by any court of the State. It is insisted that such injunctions might have been properly issued, in view of the invalidity of the statutes under which the proceedings were instituted. As to threatened proceedings, the Circuit Court of the United States first secured jurisdiction. It had the right, under all of the authorities, to restrain the enforcement of officers from enforcing, or undertaking to enforce, the provisions of the dispensary-prohibition statute. This right existed, if the statute was either unconstitutional and void—as conflicting with the Federal Constitution—or, if the right to proceed thereunder did not accrue until after the arrival of the intoxicating liquors at their destination and their delivery to the consignee. The Atchison Company had the right to invoke the jurisdiction of the Circuit Court of the United States for the protection of its business against the wrongs and trespasses threatened to be committed by the defendants. By the filing of such bill the said court acquired exclusive jurisdiction and had the right to enter such orders and take such further steps as might become necessary as against either the parties to said proceedings or the court issuing search and seizure warrants so as to render the jurisdiction effective. The purposes of the bill was to have the Court determine and adjudge that the right of search and seizure did not exist until after the arrival of the intoxicating liquors at their destination and their delivery to the consignee. The jurisdiction of the court was invoked to protect the property of the company, the business of the company, and the property of its patrons against unlawful

and wrongful seizure. Can the alleged enforcement officers of the state effectually destroy the jurisdiction thus rightfully acquired while such cause is pending, by invoking the jurisdiction of some other court to have that court adjudge and determine the identical question? That is, whether such liquors are subject to seizure and sale before their arrival at the destination and delivery to the consignee?

It is respectfully urged that exclusive jurisdiction over this particular subject, so far as the property and business of the Atchison, Topeka & Santa Fe Railway Company are concerned, was acquired by filing of the bill and service of process; that the Circuit Court of the United States cannot be divested of jurisdiction thus acquired by instituting search and seizure proceedings in the courts of the state, the alleged purpose of which is to have determined the same questions by a different tribunal.

AN ADEQUATE REMEDY EXISTS BY APPEAL AND
THE EXTRAORDINARY RELIEF SOUGHT BY
PROHIBITION SHOULD FOR THAT REA-
SON BE DENIED.

This court said in reference to this subject in case of *In re Rice*, Petitioner, 155 U. S. 402:

“Where it appears that the court whose action is sought to be prohibited has clearly no jurisdiction of the cause originally, or of some collateral matter arising therein, a party who has objected to the jurisdiction at the outset and has no other remedy is entitled to a writ of prohibition as a matter of right. But

where there is another legal remedy by appeal or otherwise, or where the question of the jurisdiction of the court is doubtful, or depends on facts which are not made matter of record, or where the application is made by a stranger, the granting or refusal of the writ is discretionary."

Leave to file was denied.

This language is repeated as presenting the proper test in the case of *In re New York, etc., Steam Ship Company*, Petitioner, 155 U. S. 531: Immediately following the quotation this court further discussing the matter uses the following language:

"Without reviewing the action of the District Court on its merits, it certainly cannot be said that that court was clearly without jurisdiction, or that petitioners were without other remedy; for in the event of a decree against them, they could appeal directly to this court on the question of jurisdiction, or to the Circuit Court of Appeals upon the whole case, and that court might certify the question to this court for decision. *Ex parte Morrison*, 147 U. S. 114, 126; *United States, vs. Jahn*, 155 U. S. 109.

"And the case is far from being one in which we should regard it as a proper exercise of discretion to interfere with the orderly progress of the suit below the issue of this writ. The District Court, having general jurisdiction over the subject-matter and over the parties, should be allowed to proceed to decision, and if error has been committed in entertaining the claimants' contention against the characters in the same suit with the libel against the ship, it may be corrected on appeal. *In re Fassett*, Petitioner, 142 U. S. 479, 484½; *Moran v. Sturges*, 154 U. S. 256, 286."

Writ of prohibition denied.

In the case of *In re Hugelley Mfg. Co. & C.*, 184 U. S., 297, the law is declared in the case of *In re Rice*, *supra*,

and *In re New York, etc., Steam Ship Company*, re-affirmed in the following language:

"It is firmly established that where it appears that a court, whose action is sought to be prohibited, has clearly no jurisdiction of the cause originally, a party who has objected to the jurisdiction at the outset and has no other remedy, is entitled to a writ of prohibition as a matter of right. But where there is another legal remedy by appeal or otherwise, or where the question of the jurisdiction of the court is doubtful, or depends on facts which are not made matter of record, the granting or refusal of the writ is discretionary. *In re Rice*, 155 U. S. 396."

In this connection it is respectfully submitted that no objection has ever been entered to the granting of either the restraining order or the temporary injunction in this cause; no application has ever been made to vacate the same. The application is here made by stranger to the proceedings below. Every single factor which usually defeats an application for writ of prohibition is present in this cause. It is further urged that the interest of the State of Oklahoma is not of such a character as will justify the granting of the extraordinary relief sought. At the utmost it is but an endeavor to enforce a statute of the State, in conflict with the decisions of the courts of last resort of such state. It is most earnestly urged because of these facts the writ should be denied.

THE OKLAHOMA DISPENSARY-PROHIBITION ACT
IN SO FAR AS IT PROVIDES FOR SEARCHES,
SEIZURES AND PENALTIES, AS APPLIED TO
THE PROPERTY AND BUSINESS OF THE
ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY, IS VIOLATIVE OF THE FOUR-
TEENTH AMENDMENT TO THE CONSTITU-
TION OF THE UNITED STATES IN THAT IT
TAKES ITS PROPERTY AND IMPAIRS ITS
BUSINESS WITHOUT DUE PROCESS OF LAW
AND DENIES TO IT EQUAL PROTECTION OF
OF THE LAWS.

The Oklahoma Dispensary-Prohibition law is entitled,

"An Act to establish a State agency, and local agencies
for the sale of intoxicating liquors for certain purposes; and
providing for referring the same to the people; prohibiting
the manufacture, sale, barter, giving away or otherwise
furnishing of intoxicating liquors, except as herein provided;
providing for the appointment of an attorney, and for the
enforcement of the provisions of this Act; making an ap-
propriation and declaring an emergency." Session Laws
of Oklahoma, 1907-8, page 594.

Articles 1 and 2 of this Act, which contain altogether
24 sections, provide an elaborate scheme for the State of
Oklahoma engaging in the whisky traffic for profit. The
result of the provision is to create a State agency and num-
erous local agencies for the purpose of purchase, sale and
distribution of intoxicating liquors to citizens of the State
at a profit.

Article 3, containing 30 sections, undertakes to exclude competition with the State in its liquor traffic and to prohibiting the manufacture, sale, or giving away, or the keeping for the purpose of sale or giving away, or of transporting between points within the State of spirituous, vinous, fermented or malt liquors, imitations thereof and substitutes therefor.

Sections 5, 6, 7, 8, 9, 10, and 11 of said Act constitute the search and seizure provisions thereof and are as follows:

"Sec. 5. If it shall be made to appear to any judge of the district or county court or justice of the peace that there is probable cause to believe that liquors are being manufactured, sold, bartered, given away, or otherwise furnished, or are being kept for the purpose of selling, bartering, giving away, or otherwise furnishing liquors in violation of this Act, such judge or magistrate shall issue a warrant directed to any officer of the county whom the complainant may designate, having power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant, and to seize all such liquors there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for such illegal manufacturing, selling, bartering, giving away, or otherwise furnishing of such liquors, and safely keep the same, and to make return within three days of said warrant, showing all acts and things done thereunder, with a particular statement of all property seized, of the person or persons in whose possession the same was found, if any, and if no person be found in the possession of said property, his return shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such liquors, furniture or fixtures so seized, and if no person be found in the possession thereof, a copy of said warrant shall be posted

on the door of the building or room wherein the same are found."

"Sec. 6. Upon the return of such warrant as provided in the next preceding section, the magistrate or judge shall fix a time, not less than ten days nor more than thirty days thereafter, for hearing of said return, when he shall proceed to hear and determine whether or not the property so seized, or any part thereof was used in violation of any of the provisions of this Act. At such hearing, any party claiming an interest in such property, may appear and be heard, and if upon such hearing it shall appear that any property so seized was knowingly used, or permitted to be used in violation of any provision of this Act, the same shall be adjudged forfeited by the state, and shall be delivered to the custody of the superintendent, to be disposed of under the provisions of this Act. If upon such hearing it shall appear that any property so seized was not kept or used for an unlawful purpose, or if any person shall show that he is the owner of any furniture, fixtures or other property seized under such warrant, and that the same, or any part thereof, were unlawfully used without his knowledge or consent, the same shall be returned to its lawful owners."

Sec. 7. No liquors, vessels, fixtures, furniture or other property seized by virtue of any warrant issued under the provisions of this Act shall be taken from the possession of the officer seizing the same under any replevin or other process.

"Sec. 8. No such warrant shall issue but upon probable cause, supported by oath or affirmation describing as particularly as may be the place to be searched, or the person or thing to be seized.

"Sec. 9. No warrant shall be issued to search a private residence, occupied as such, unless it, or some part of it, is used as a store, shop, hotel, boarding house, or place for storage, or unless such residence is a place of public resort."

"Sec. 10. When a violation of any provision of this Act shall occur in the presence of any sheriff, constable, marshal, or other officer having power to serve criminal process, it shall be the duty of such officer, without warrant, to arrest the offender and seize the liquor, bars, furniture, fixtures, vessels, and appurtenances thereunto belonging so unlawfully used, and to take the same immediately before the court or judge having jurisdiction in the premises and there make complaint, under oath, charging the offense so committed, and he shall also make return, setting forth a particular description of the liquor and property seized, and of the place where the same was so seized, whereupon the court or judge shall issue a warrant commanding and directing the officer to hold the property so seized in his possession until discharged by due process of law, and such property shall be held and a hearing and adjudication on said return had in like manner as if the seizure had been under warrant therefor."

"Sec. 11. All liquors adjudged forfeited to the state under the provisions of this Act, shall, as far as practicable, be utilized by the superintendent for the benefit of the state agency. All bars, fixtures, and property, other than liquors, adjudged forfeited to the state under the provisions of this Act, shall be disposed of by the superintendent in such manner that they cannot be again so unlawfully used."

It is respectfully insisted that the application of this statute, and searches and seizures thereunder, to the business of the interstate carrier, with its thousands of packages to transport between the different states, numbers of which are handled at practically every office in the state every day in the year, is violative of the 14th amendment to the Constitution in that it takes the property and impairs the business of the company without due process of law and denies to it the equal protection of the laws.

The proceedings are initiated, as provided in section 8:

"No such warrant shall issue but upon probable cause, supported by oath or affirmation, describing as particularly as may be, the place to be searched or the person or thing to be seized."

The Supreme Court of the State, in the case of *State Hooker*, 98, Pac. 964, construed the statute so as to insert the word "and," in lieu of the word "or" following the word "searched," so as to make the statute read, "particular may be the place to be searched and the person or thing be seized."

Upon the making of the affidavit a warrant is issued by a judge or justice of the peace, directed "to any officer of the county whom the complainant may designate having the power to serve criminal process, commanding him to search the premises described and designated in such complaint and warrant, and to seize all such liquors there found, together with the vessels in which they are contained, * and to make a return within three days of said warrant, showing all acts and things done thereunder, with a particular statement of all property seized and of the person or persons in whose possession the same was found, if any, and if no person be found in possession of said property his return shall so state."

There is a further provision for the delivery of a copy of the warrant to the person in whose possession the liquors were found, and if they are not in the possession of any one, a copy of the warrant shall be posted on the door of the building where found. When the return is made, the magistrate is required "to fix a time, not less than ten days nor more than thirty days thereafter," when he is "to hear and determine whether or not the property so seized, or any part thereof, was used in violation of any of the provisions of this Act."

The person claiming the property may appear and as-

sert his claim, and if it shall appear that the property so seized was not kept or used for an unlawful purpose, * * * the same shall be returned to its lawful owners."

The warrant is not required to, and does not, contain any notice of the time and place of hearing. The judge or justice fixing the time and place of hearing need not give any notice whatever to any of the persons interested. The only means by which a party whose property has been seized, if he is fortunate enough to learn of the seizure, may ascertain when the cause is to be heard, is to wait daily upon the action of the judge or justice until he shall fix the time for hearing. Under the terms of the statutes he is expressly prohibited from instituting any character of action to recover possession of the property. The informer goes before such judge, or justice, as suits him, makes his affidavit, has the same delivered to such officer as suits him to execute the process. The officer is directed to search a given place, for instance, the freight depot of The Atchison, Topeka & Santa Fe Railway Company of Oklahoma City, with its thousands of packages in which thousands of persons are interested; the officer is further commanded by the writ not to seize any particular whisky but to seize all intoxicating liquors found in the depot or place ordered to be searched. The consignors of the various shipments of intoxicating liquors are located at divers points outside of the State of Oklahoma. They are the persons with whom the railway company entered into the contract of shipment.

It is respectfully submitted that the statute, in authorizing such seizures and judgment, without any notice whatever, and in such a limited time, is violative of the fourteenth amendment to the Constitution, as above set out.

Roller vs. Holly, 176 U. S. 398.

Fisher vs. McGirr, et al., 67 Mass., page 1;

United States vs. Boyd, 116 U. S. 616.

THE RAILWAY COMPANY IS NOT THE KEEPER
OF THE CONSCIENCE, NOR THE CENSOR OF
THE APPETITES OR CONTRACTS OF THE CIT-
IZENS OF THE STATE OF OKLAHOMA.

We have indeed come upon strange times when it becomes necessary for a public service corporation to make the above assertion as against the contentions of the officers of the State of Oklahoma.

It is contended however in the cross bill by counsel for the Governor in the Circuit Court of United States for the Western District of the State of Oklahoma in the cause in which a writ of prohibition is sought herein, that a railroad of the state before it can accept interstate shipments of intoxicating liquors must make the following inquiries and obtain the following information:

FIRST: The carrier must ascertain whether or not the liquors consigned to a given person are to be used by that person, or by his family;

SECOND: Whether the quantity shipped is more than than that person needs to use, or is permitted to use:

THIRD: Whether anyone else has at, or about the same time, shipped intoxicating liquors to this same person, so as to reduce his needs along this line. This inquiry would perhaps become somewhat personal. It would also perhaps result in an investigation as to the condition of health of the consignee and of the members of his family, and whether the particular ailments that any one of them or all of them were suffering from were of such character that the liquors ordered would have a remedial effect.

FOURTH: The carrier would also be required to ascertain whether or not the consignee had paid the special revenue tax so as to be authorized to engage in the sale of intoxicating liquors. If he had done so, the carrier would be obliged to determine from that fact that the consignee intended to sell the liquor so shipped.

These are a few of the acts that counsel for the Governor in his cross-bill asks that carriers engaged in the transportation of intoxicating liquors into the State of Oklahoma be required to do. This is a character of censorship not in keeping with a republican form of government, or an independent and liberty-loving people. It is a form of censorship, which if applied to any other transaction of life, would be intolerable.

If the statutes of the State of Oklahoma require as a condition of the right to transport intoxicating liquors into the state that these suggestions be complied with, then it is respectfully submitted that no greater burden could be imposed upon interstate commerce, nor a more severe and drastic regulation thereof enacted. Not only this, the entire burden of acting as judge and jury would be shifted upon the carrier with all the responsibilities for errors of judgment without any of the protection that surrounds a court or jury if either err in judgment.

RESPONSIBILITY OF ENFORCEMENT OFFICERS FOR TRESPASS.

As to the responsibility of the state officers for the trespass committed under the alleged authority of the search and seizure clause of the Oklahoma Dispensary-Prohibition Act, it is insisted by counsel for the Relator that the processes

ued by district or county judges or justices of the peace, directing a search of any given premises and a seizure of the intoxicating liquors found thereon is an absolute protection against liability of any character for the seizure of intoxicating liquors, although the same is not subjected to seizure under warrant; that a citizen who has ordered and has had shipped to him for his own use intoxicating liquors from another state and has been kept out of possession by such seizure for an indefinite period, is wholly without any recourse whatever for the wrong perpetrated.

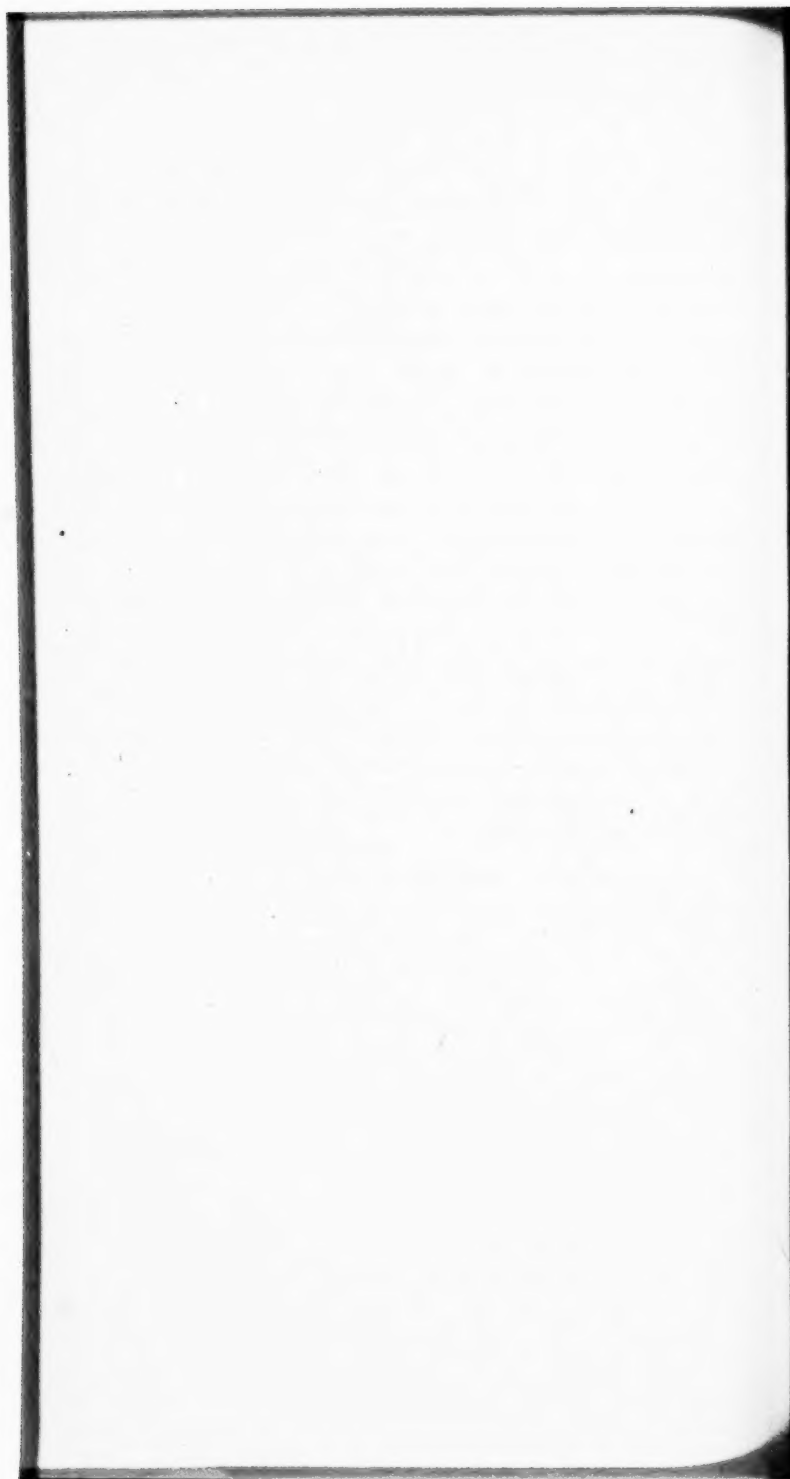
Not conceding that this is true, but accepting this contention for the purpose of this argument only, we respectfully suggest that no greater reason could exist for the intervention of a court of equity than that it is possible under the provisions of that statute to commit one trespass after another and the person who suffers injury thereby is absolutely without any remedy at law; nor could there be a better reason for holding this statute unconstitutional than to hold that it deprives the carrier of the property seized and of its unpaid freights thereon, and that it has no remedy whatever for such wrong.

It is respectfully submitted that in no event is the relator entitled to the relief prayed for.

J. R. COTTINGHAM,

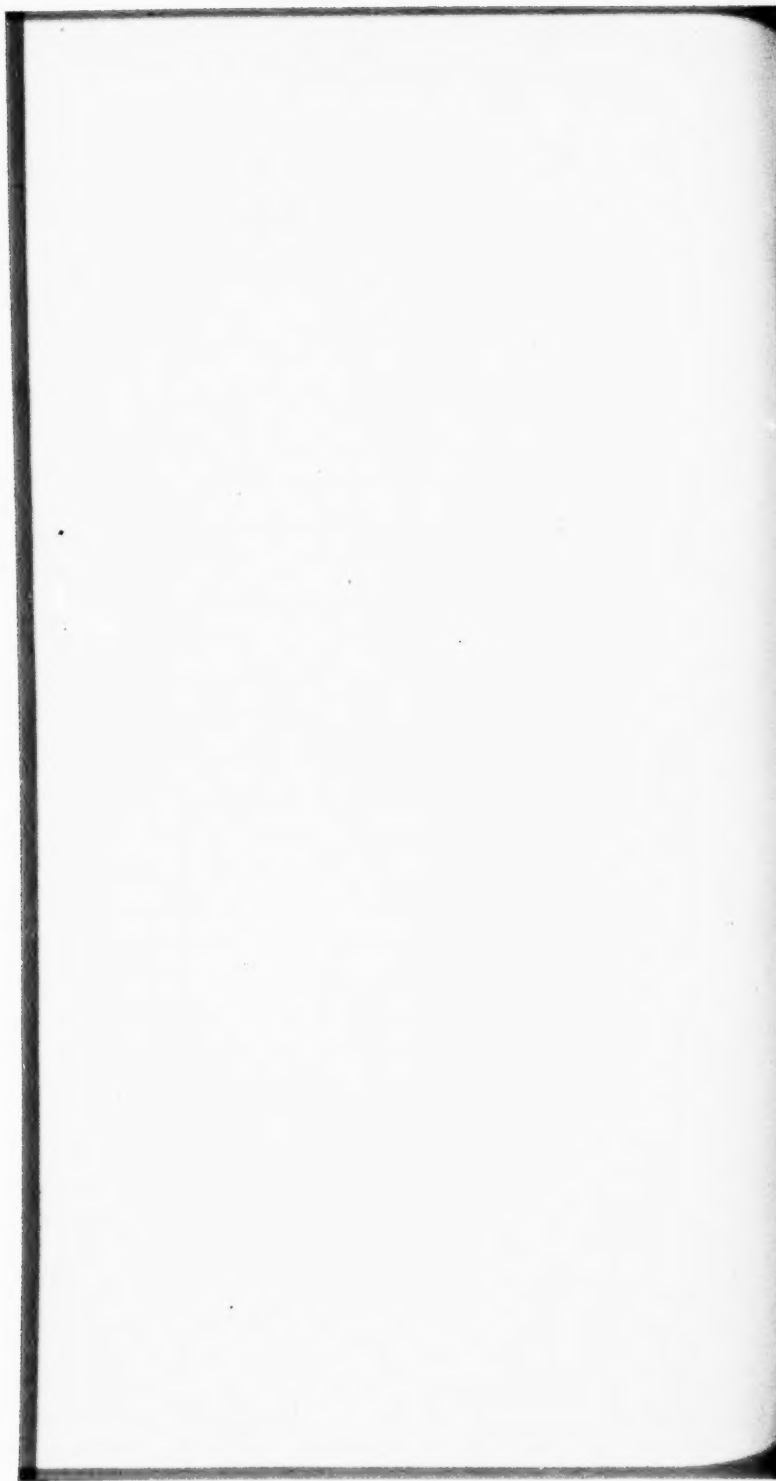
S. T. BLEDSOE,

Solicitors for Respondents.



INDEX

	Page.
Brief statement of reasons why relator is not entitled to relief sought	3
Statement of Issues Involved	5
Argument	19
This Court is without Jurisdiction	20
Judicial power as distinguished from police power as authority for the various proceedings as against which injunctions have been sought.....	22
The Proceedings in the Circuit Court are not against the State of Oklahoma	31
The effect of the injunctions complained of is not to stay proceedings in the State Courts	34
An adequate remedy exists by appeal and the extraordinary relief sought by prohibition should for that reason be denied	40
The Oklahoma Dispensary-Prohibition Act Unconstitutional	43
The Railway Company is not the keeper of the conscience, nor the censor of the appetites or contracts of the citizens of the State of Oklahoma	49
Responsibility of enforcement officers for trespass.....	50



APR 4 1910

JAMES H. McKENNEY,

CLERK.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 9, Original.

THE STATE OF OKLAHOMA, ONE OF THE UNITED STATES OF AMERICA, BY CHARLES N. HASKELL, GOVERNOR AND SUPREME EXECUTIVE OFFICER THEREOF, PETITIONER,

vs.

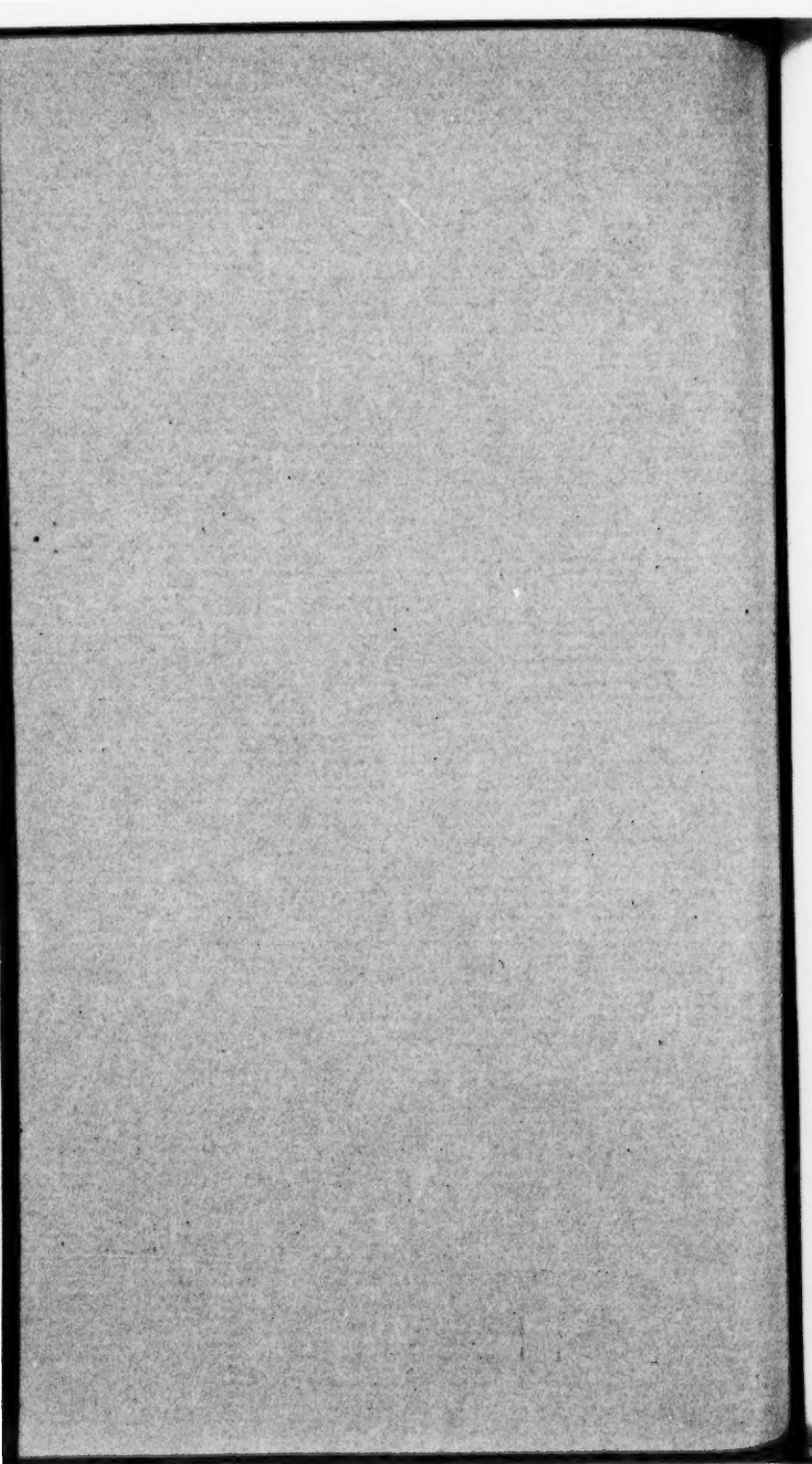
THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA AND RALPH E. CAMPBELL, THE DISTRICT JUDGE OF SAID DISTRICT, SITTING AS JUDGE OF SAID CIRCUIT COURT, RESPONDENTS.

RESPONSE

OF

RALPH E. CAMPBELL,

United States District Judge for the Eastern District of Oklahoma, to rule to show cause.



Index to Transcript of No. 9, Original.

No. 576.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY

vs.

FRED. CALDWELL ET AL.

	Page.
Bill	2
Temporary restraining order	13
Order of delivery	14

No. 1225.

THIXTON, MILLETT & Co.

vs.

S. W. STONE, State Dispensary Agent, et al.

Bill	17
Temporary injunction order	30
Stipulation	32
Demurrer	33
Supplemental bill	35
Order overruling respondents' demurrer and granting temporary injunctions against respondents in supple- mental bill	40

No. 1232.

DAN DANCIGER ET AL.

vs.

S. W. STONE, Superintendent of the State Agency, et al.

Bill	43
Objection to the issuance of a temporary injunction	52
Demurrer	54
Temporary injunction order	59
Supplemental bill	61
Restraining order on supplemental bill	69

No. 1235.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY

vs.

HENRY E. RIDENHOUR and HOLLAND CLARKE.

Bill	70
Temporary injunction	79
Demurrer	81

No. 1236.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY

vs.

ROBERT B. WATSON ET AL.

Bill	83
Agreement	94
Search warrant	95
Temporary injunction	97
Demurrer	101

No. 1237.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY

vs.

W. F. BLAKEMORE ET AL.

Bill	103
Temporary injunction	116
Demurrer	122

No. 1242.

THE O. F. HALEY CO.

vs.

S. W. STONE, State Dispensary Agent, et al.

Bill	124
Restraining order	134
Demurrer	136
Objection to issuance of a temporary injunction	138
Order overruling demurrer	140

No. 1266.

FEHRENBACH WINE & LIQUOR CO.

vs.

S. W. STONE, State Dispensary Agent, et al.

Bill	141
Temporary injunction	155
Demurrer	157

No. 1267.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY

vs.

JOHN M. HAYES ET AL.

Bill	159
Temporary injunction	173
Demurrer	175

[10700]

Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 13, Original.

*EX PARTE: IN THE MATTER OF THE STATE OF
OKLAHOMA, By CHARLES N. HASKELL, Governor,
Petitioner.*

RESPONSE OF RALPH E. CAMPBELL, UNITED
STATES DISTRICT JUDGE FOR THE EASTERN
DISTRICT OF OKLAHOMA TO RULE TO SHOW
CAUSE.

*To the Honorable, The Chief Justice and Associate Justices
of the Supreme Court:*

In compliance with the order to show cause, of which a
copy is hereunto annexed, the undersigned, Judge of the
District Court of the United States for the Eastern District
of Oklahoma, respectfully returns and certifies as follows:

ORDER TO SHOW CAUSE SUPREME COURT OF THE UNITED STATES.

No. 13, Original, October Term, 1909.

*Ex Parte: In the matter of The State of Oklahoma, by
Charles N. Haskell, Governor, Petitioner.*

On consideration of the petition for a writ of prohibition
to the Circuit Court of the United States for the Eastern
District of Oklahoma.

It is now here ordered by the Court that cause be shown
by the said Circuit Court of the United States for the
Eastern District of Oklahoma and Honorable Ralph E.
Campbell, District Judge of said District, sitting as Judge
of said Circuit Court, before this Court at the City of

Washington on Monday, April 4th, 1910, at 12 o'clock noon of that day or as soon thereafter as counsel can be heard, why a writ of prohibition should not be granted as prayed in said petition.

February 28, 1910.

On September 9th, 1909, there was filed in the Circuit Court the following bill:

IN THE UNITED STATES CIRCUIT COURT FOR THE EASTERN
DISTRICT OF THE STATE OF OKLAHOMA.

No 576.

BILL OF COMPLAINT FOR INJUNCTION.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

FRED CALDWELL, et al, Defendants.

*To the Honorable Judges of the Circuit Court of the
United States in and for the Eastern District of the
State of Oklahoma:*

The Missouri, Kansas & Texas Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Kansas, and having its residence therein, brings this, its bill of complaint against Fred Caldwell, B. J. Waugh, R. E. Lozier, M. A. Breckinridge, T. R. Dean, Lon Lewis, John A. Harrison, J. J. Moran, T. A. Henry, G. W. Davis, N. J. Gubser and Robert H. Tarter, all of whom are citizens of the State of Oklahoma; the said Fred Caldwell, B. J. Waugh and R. E. Lozier being inhabitants of the Western District of the State of Oklahoma, and the said M. A. Breckinridge, T. R. Dean, Lon Lewis, John A. Harrison, J. J. Moran, T. A. Henry, G. W. Davis, N. J. Gubser and Robert H. Tarter being inhabitants of the Eastern District of the State of Oklahoma.

And thereupon your orator complains and says that it is now and for many years past has been a common carrier

of goods for hire, owning and operating lines of railroad in the States of Missouri, Kansas and Oklahoma and engaged in the transportation of all classes of goods that may be lawfully transported from one state into another as well as from points within the State of Oklahoma to other points within the State of Oklahoma, and as such common carrier your orator has built up the extensive and valuable business and that as such common carrier of goods for hire it becomes your orator's duty to accept for transportation from points outside of the State of Oklahoma to points within the State of Oklahoma, intoxicating liquors of various characters, including amongst others, whisky, beer and wine and brandy, and that your orator cannot lawfully refuse because of its being such common carrier to receive at points outside of the State of Oklahoma for shipment to points within the State of Oklahoma, intoxicating liquors, and cannot lawfully refuse to transport such interstate shipments of liquor, and it is so receiving for shipment and is so transporting in the ordinary course of its business as a common carrier such interstate shipments of liquor to points within the State of Oklahoma; that the volume of such interstate shipments of liquor so tendered to your orator at points outside of this State consigned to points inside of this State in the ordinary course of its business as a common carrier is of a large volume and the value of such shipments within the six months last past aggregate many thousands of dollars and that the revenues upon such shipments to your orator have within the six months last past aggregated more than Two Thousand Dollars.

Your orator further states that when such interstate shipments of liquor are tendered to it for shipment it is required by law to issue its bills of lading therefor whereby it binds itself to transport said goods from such respective points outside of this State to such respective points within this State and to deliver such respective shipments of liquor

to the respective consignees at the respective points of destination named in said bills of lading, and that if your orator fails to so deliver said goods in accordance with said bills of lading, your orator becomes liable in damages to the various consignees for the full value of said goods.

Your orator further states that owing to the large amount of such interstate shipments of liquor that will hereafter be shipped over your orator's line the value of its business in transporting said goods is worth to your orator in the immediate future far in excess of the sum of Two Thousand Dollars.

Your orator further states that the above named defendants, and each of them, are interfering with the interstate business of your orator in the handling and transporting and delivery of such interstate shipments of liquor, claiming to act under the authority of an Act of the Legislature of the State of Oklahoma entitled:

"An Act to establish a State Agency and Local Agencies for the sale of Intoxicating Liquors for certain purposes; and providing for referring the same to the people. prohibiting the manufacture, sale, barter, giving away, or otherwise furnishing of Intoxicating Liquors, except as herein provided; providing for the appointment of an attorney, and for the enforcement of the provisions of this Act: Making an appropriation and declaring an emergency."

approved March 24, 1908, and that on the 26th day of August, A. D. 1908, defendant B. J. Waugh, pretending to act under a pretended search warrant, unlawfully and wrongfully entered the depot building of your orator at the station of McAlester in the said Eastern District of the State of Oklahoma and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor:

One cask beer from the Royal Brewing Co., Kansas City, Missouri, to Jas. House, McAlester, Oklahoma.

One box liquor, from Danciger Bros., Kansas City, Missouri, to J. H. House, McAlester, Oklahoma.

One box liquor from Schiller Bros., Kansas City, Missouri, to T. L. Walters, McAlester, Oklahoma.

Five casks beer from Home Brewing Co., Joplin, Missouri, to J. A. House, McAlester, Oklahoma.

Ten casks beer from Dallas Brewing Co., Dallas, Texas, to Chas. Gerald, McAlester, Oklahoma.

One cask beer from Val Blatz Brewing Co., Kansas City, Missouri, to W. A. Mulcahy, McAlester, Oklahoma.

Two casks liquor from Danciger Bros., Kansas City, Missouri, to C. A. Parker, McAlester, Oklahoma.

One case liquor from Danciger, Bros., Kansas City, Missouri, to J. House, McAlester.

One box liquor from S. D. Co., Kansas City, Missouri, to J. M. Green, McAlester, Oklahoma.

One cask liquor from Danciger Bros., Kansas City, Missouri, to Frank Macare, McAlester, Oklahoma.

One barrel brandy from Danciger Bros., Kansas City, Missouri, to C. Massaro, McAlester, Oklahoma.

Three casks beer from Danciger Bros., Kansas City, Missouri, to George Ward, McAlester, Oklahoma.

One case whisky from Danciger Bros., Kansas City, Missouri, to Ed Block, McAlester, Oklahoma.

That said pretended search warrant under which said defendant B. J. Waugh wrongfully made such seizure was issued by defendant Robert H. Tarter and the above articles so wrongfully seized by said B. J. Waugh are now wrongfully and unlawfully held by defendant John A. Harrison, and that unless prevented by order of this Court from so doing, the said defendants B. J. Waugh, John A. Harrison and Robert H. Tarter will at a very early date pretend to forfeit said liquor as against your orator and will deliver said liquor to defendant R. E. Lozier and said defendant R. E. Lozier will wrongfully and unlawfully take possession of said liquor and permanently withhold same from your

orator, claiming to do so by virtue of the State statute of the State of Oklahoma hereinabove referred to, and that said defendant B. J. Waugh, John A. Harrison, Robert H. Tarter and R. E. Lozier in their conduct in this respect are acting under the advice and direction of defendants Caldwell and Dean.

Your orator further states that on the 1st day of September, A. D. 1908, defendant J. J. Moran, pretending to act under a pretended search warrant, unlawfully and wrongfully entered the depot building of your orator at the station of Tulsa in the said Eastern District of the State of Oklahoma and unlawfully and wrongfully seized and took from said depot the following interstate shipments of liquor:

Five cases liquor from Danciger Bros., Kansas City, Missouri, to J. A. King, Tulsa, Oklahoma.

Five cases liquor from Danciger Bros., Kansas City, Missouri, to J. A. King, Tulsa, Oklahoma.

Ten cases liquor from Danciger Bros., Kansas City, Missouri, to J. A. King, Tulsa, Oklahoma.

Two baskets liquor from Danciger Bros., Kansas City, Missouri, to T. C. Griffin, Tulsa, Oklahoma.

Two cases liquor from C. Transfer Co., Kansas City, Missouri, to J. W. Boering, Tulsa, Oklahoma.

That said pretended search warrant under which said defendant J. J. Moran wrongfully made such seizure was issued by defendants G. W. Davis and the above articles so wrongfully seized by the said J. J. Moran are now wrongfully and unlawfully held by defendant Lon Lewis and T. A. Henry and that unless prevented by order of this Court from so doing, the said defendants J. J. Moran, Lon Lewis, T. A. Henry and N. J. Gubser will at a very early date pretend to forfeit said liquor as against your orator and will deliver said liquor to defendant R. E. Lozier and said defendant R. E. Lozier will wrongfully and unlawfully take possession of said liquor and permanently withhold the

same from your orator, claiming to do so by virtue of the State statute of the State of Oklahoma hereinabove referred to, and that said defendants J. J. Moran, Lon Lewis, T. A. Henry, N. J. Gubser and R. E. Lozier in their conduct in this respect are acting under the advise and direction of defendants Caldwell and Breckinridge.

Your orator further states that several other seizures of interstate shipments of liquor have been made from your orator at various depots on its line in the Eastern District of the State of Oklahoma which was made as your orator is informed and believes by advice and direction of defendants Caldwell and Waugh and the liquor so seized has been turned over, as your orator is informed and believes, to defendant R. E. Lozier and permanently retained by him as against your orator, and the payment of the full value of said liquor is now being demanded of your orator by the consignors at different points and your orator is not able to make a successful defense against such claims of said consignors because the said acts of said defendants Fred Caldwell, B. J. Waugh and R. E. Lozier in connection with said interstate shipments of liquor were wrongful and unlawful and cannot be justified by your orator or to said consignors.

Your orator further states that the said defendants John A. Harrison and Lon Lewis decline to deliver back to your orator the above specified interstate shipments of liquor so as aforesaid wrongfully and unlawfully seized from your orator at its depots at McAlester and Tulsa and the respective defendants herein other than defendant Fred Caldwell all represent that in their actions they are being controlled by the advice and direction of defendant Fred Caldwell, and that if said interstate shipments of liquor so unlawfully and wrongfully seized from your orator as aforesaid are not promptly delivered back into the possession of your orator that a large number of suits against your orator at Dallas, Texas, Kansas City, Missouri, and

Joplin, Missouri, and others and divers points will be insituated against your orator to recover the respective values of said shipments, at great cost and annoyance to your orator.

Your orator further states that by virtue of its business as a common carrier of goods for hire it will be compelled to receive large quantities of interstate shipments of liquor consigned from points outside of the State of Oklahoma to points within the Eastern District of the State of Oklahoma, the value of which shipments will in the course of one year's time exceed the sum of many thousands of dollars and the earnings of your orator transporting same will be worth to your orator much more than the sum of Two Thousand Dollars, and that these defendants, and especially defendants Fred Caldwell and B. J. Waugh, are threatening to continue this wrongful and unlawful interference with the interstate business of your orator in the transportation and delivery of these interstate shipments of goods and which interference on their part will involve your orator in innumerable lawsuits at various points with various parties who may offer to your orator at points outside of the State of Oklahoma shipments of liquor consigned to points within the Eastern District of the State of Oklahoma, and to all of which persons your orator would be required to issue its bill of lading covering the interstate shipments of goods so offered to it consigned to points within the Eastern District of the State of Oklahoma and for whom it will be under the law required to transport said liquor in accordance with said bills of lading and to points within the Eastern District of the State of Oklahoma, and to deliver same to the respective consignees.

Your orator further states that under the constitution and laws of the United States it has lawfully carried over its line from points outside of the State of Oklahoma consigned to points in the Eastern District of the State of Oklahoma the shipments hereinabove specified which hav

so as aforesaid been wrongfully and unlawfully seized from your orator and that your orator in accordance with its lawful duties must engage in the future in the transportation of these intoxicating liquors between points without the State of Oklahoma to points within the Eastern District of the State of Oklahoma and there deliver said consignments to the consignees named in the bills of lading and that the defendants by their course are seeking to deny the right of your orator under the constitution and laws of the United States so to do, and to deprive your orator of the right so to do as guaranteed to it by the constitution and laws of the United States and that your orator is entitled to be protected in its said right by the order of this Court.

Your orator further states that the defendants Fred Caldwell and B. J. Waugh are engaged in the occupation of aiding, abetting, assisting, advising and encouraging their co-defendants, and various, divers and sundry persons so as aforesaid unlawfully interfering with the exercise of the duties and privileges of your orator as a common carrier, by these and other acts of said persons to interfere and attempt to interfere with the delivery of interstate shipments of intoxicating liquors by your orator to persons resident in this State, which liquors are shipped in the ordinary course of business by persons outside of the State of Oklahoma, and from points outside of this State, to persons within the Eastern District of this State, and to points within the Eastern District of this State, and which goods are carried under bills of lading properly issued by your orator to the consignor at points outside of this State to consignees at points within the Eastern District of this State and by causing their co-defendants and such various divers and sundry other persons to go into the depots and cars of your orator within the Eastern District of this State and to then and there wrongfully and unlawfully seize and wrongfully and unlawfully attempt to seize such

interstate shipments of liquor which are being held by your orator for delivery to such consignees in accordance with its lawful duty as a common carrier, and that when intoxicating liquors are secured by virtue of such unlawful seizures said defendants Fred Caldwell and B. J. Waugh undertake by some unlawful character of proceeding to confiscate the same and deliver or have the same delivered over into the possession of said defendant R. E. Lozier in violation of the constitution and laws of the United States, and that by reason of the wrongs and injuries already done and by reason of the threatened continuance of such wrongs and injuries as hereinabove set out, your orator has been greatly damaged in excess of the sum of Two Thousand Dollars and that it has and will suffer an irreparable damage in the transaction of its lawful interstate business, and that it has no adequate relief at law from the wrongs and injuries herein complained of and unless protected by orders of this Court it will continue to suffer irreparable injury and damage at the hands of said defendants Fred Caldwell, B. J. Waugh and those whom they incite and abet in like conduct.

Your orator further charges and believes that the defendants are not financially able to respond in damages for the large sums of money in which your orator will be damaged by reason of the continued wrongs and injuries heretofore practiced and hereafter to be practiced by said defendants upon your orator as hereinabove alleged.

To the end, therefore, that your orator may have that relief which it can only have in a court of equity, your orator prays this Honorable Court to now grant it a writ of injunction restraining and enjoining the said defendants, and each of them, from further interfering with or seizing or receiving or aiding, abetting, assisting, advising or encouraging their co-defendants, or any other person or persons to interfere with or seize any shipment of whisky, beer, wine, brandy or other liquors that may be in the pos-

session of your orator in its cars or depots within the Eastern District of the State of Oklahoma consigned from points outside of the State of Oklahoma to points within the Eastern District of the State of Oklahoma, and directing defendants Harrison and Lewis to at once deliver to the agents of your orator at your orator's depots at McAletser and Tulsa respectively the respective liquor so as aforesaid wrongfully and unlawfully seized and taken therefrom, and that said defendants, and each of them, may answer the premises, but not upon oath or affirmation, an answer under oath being hereby expressly waived by your orator, your orator now prays this Honorable Court that process be duly issued directed to said defendants, and each of them, commanding them to appear before this Honorable Court and then and there full, true, correct and perfect answer make to all and singular the premises, and to stand, perform and abide by such orders, directions and decrees as may be made against them in the premises as shall seem meet and agreeable to equity, and this your orator will ever pray.

CLIFFORD L. JACKSON,
Solicitor for Complainant.

UNITED STATES OF AMERICA,

ss.

EASTERN DISTRICT OF OKLAHOMA.

John W. Conner, of lawful age, first being duly sworn, on his oath states that he is agent of the Missouri, Kansas & Texas Railway Company, that it is a corporation organized and existing under and by virtue of the laws of the State of Kansas, and that he knows the contents of the above and foregoing bill of complaint and that the same are true of his own knowledge, except as to the matters alleged to have occurred at Tulsa and as to the matters in said bill of complaint stated on information and belief, and as to such matters he believes the same to be true.

JNO. W. CONNER.

Subscribed and sworn to before me this 8th day of September, 1908.

L. G. DISNEY

*Clerk, United States Circuit Court for the Eastern District
of the State of Oklahoma.*

SEAL

UNITED STATES OF AMERICA,

ss.

EASTERN DISTRICT OF OKLAHOMA.

Ernest Leachman, of lawful age, first being duly sworn, on his oath states that he is agent of the Missouri, Kansas & Texas Railway Company; that it is a corporation organized and existing under and by virtue of the laws of the State of Kansas, and that he knows the contents of the above and foregoing bill of complaint and that the same are true of his own knowledge, except as to the matters alleged to have occurred at McAlester and as to the matters in said bill of complaint stated on information and belief, and as to such matters he believes the same to be true.

ERNEST LEACHMAN

Subscribed and sworn to before me this 8th day of September, 1908.

L. G. DISNEY,

*Clerk, United States Circuit Court for the Eastern District
of the State of Oklahoma.*

SEAL

Filed Sept. 9th, 1908.

L. G. DISNEY, *Clerk.*

By FLORENCE HAMMERSLY, D. C.

On September 9th, 1909, there was issued in said cause the following preliminary restraining order:

IN THE UNITED STATES CIRCUIT COURT FOR THE EASTERN
DISTRICT OF THE STATE OF OKLAHOMA.

No.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant.

vs.

FRED CALDWELL, et al, *Defendants.*

Now on this 9th day of September, 1909, appeared the complainant, by its solicitor, Clifford L. Jackson, and there being no appearance on the part of the defendants, and it appearing that certain of the defendants had been notified and certain of the defendants had not been notified of this application of the complainant, and the complainant thereupon presented its application for a temporary injunction as prayed in said complaint, it is ordered that said application for temporary injunction be set down for hearing on the 16th day of September, 1908, at ten o'clock a. m. at the Federal Court in the City of Muskogee.

It is further ordered that in the meantime and until such application can be heard the said Fred Caldwell, B. J. Waugh, R. E. Lozier, M. A. Breckinridge, T. R. Dean, Lon Lewis, John A. Harrison, J. J. Moran, T. A. Henry, G. W. Davis, N. J. Gubser and Robert H. Tarter, and each of them, and their agents and employes be restrained from entering the cars, depots or other premises of the complainant, Missouri, Kansas & Texas Railway Company, and from taking therefrom intoxicating liquors shipped from points outside of the State of Oklahoma to points and consigned to persons within the Eastern District of the State of Oklahoma, and that said defendants, and each of them, their agents and employes be restrained from in any wise interfering with complainant in its handling and delivery of such interstate shipments of intoxicating liquors and from inciting, aiding, abetting or advising other persons so to do, and it is further ordered that in the meantime and until such application can be heard, the said defendants, and each of them, be restrained from taking any steps looking to the forfeiture of any of the liquors mentioned in said complaint and which it is charged in said

complaint have been heretofore unlawfully seized and taken from the complainant's depots at McAlester and Tulsa, and that the said defendants, or either of them, now having charge or possession of any or all of said liquors shall retain same in their possession without any change whatever as to the status of said liquors until this application for temporary injunction can be heard, and that this order shall be in full force and effect immediately upon the complainant filing with the Clerk of this Court an injunction bond in the sum of One Thousand (\$1,000.00) Dollars.

RALPH E. CAMPBELL,

Judge, United States Circuit Court for the Eastern District of the State of Oklahoma.

Filed Sept. 9, 1908.

L. G. DISNEY, *Clerk U. S. Circuit Court, Eastern District of Oklahoma.*

On September 16th, 1909, there was entered in said cause the following order:

IN THE UNITED STATES CIRCUIT COURT FOR THE EASTERN
DISTRICT OF THE STATE OF OKLAHOMA.

No.....

ORDER.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

FRED CALDWELL, et al, *Defendants.*

Now on this 16th day of September, 1908, appeared the complainant, by its solicitor, Clifford L. Jackson, and the defendants, by their solicitor, Fred Caldwell, and by agreement the temporary restraining order granted in this case on the 9th day of September, 1908, is hereby continued in full force and effect until a time to be hereafter agreed upon by all parties for the hearing of the application for temporary injunction, and by agreement it is further ordered that the defendants forthwith deliver over to the complainant or its

agents, the articles specified in the bill of complaint on file in this case as having been seized and taken away from the depot of complainant at McAlester on the 26th day of August, 1908, and from the depot of the complainant at Tulsa on the 1st day of September, 1908, and that this order is made upon the condition that if it should upon final adjudication of this case be determined by the court that any or all of said articles were lawfully and properly seized and taken from the possession of the complainant, that thereupon the complainant shall within ten days after such final adjudication redeliver said articles back into the possession of the defendants to be proceeded against in accordance with law, and that in the event the complainant shall fail to deliver said articles into the possession of the defendants within said ten days that the agreed value of each of said articles shall be as follows:

One cask beer from Royal Brewing Co., Kansas City, Missouri, to Jas. House, McAlester, Oklahoma, \$10.00.

One box liquor from Danciger Bros., Kansas City, Missouri, to J. H. House, McAlester, Oklahoma, \$12.00.

One box liquor from Schiller Bros., Kansas City, Missouri, to T. L. Walters, McAlester, Oklahoma, \$12.00.

Five casks beer from Home Brewing Co., Joplin, Missouri, to J. A. House, McAlester, Oklahoma, \$48.50.

Ten casks beer from Dallas Brewing Co., Dallas, Texas, to Chas. Gerald, McAlester, Oklahoma, \$100.00.

One cask beer from Val Blatz Brewing Co., Kansas City, Missouri, to W. A. Mulcahy, McAlester, Oklahoma, \$10.00.

Two casks liquor from Danciger Bros., Kansas City, Missouri, to C. A. Parker, McAlester, Oklahoma, \$24.00.

One case liquor from Danciger, Bros., Kansas City, Missouri, to J. House, McAlester, Oklahoma, \$12.00.

One box liquor from S. D. Co., Kansas City, Missouri, to J. M. Green, McAlester, Oklahoma, \$12.00.

One cask liquor from Danciger Bros., Kansas City, Missouri, to Frank Macare, McAlester, Oklahoma, \$75.00.

One barrel brandy from Danciger Bros., Kansas City, Missouri, to C. Massaro, McAlester, Oklahoma, \$40.00.

Three casks beer from Danciger Bros., Kansas City, Missouri, to George Ward, McAlester, Oklahoma, \$30.00.

One case whisky from Danciger Bros., Kansas City, Missouri, to Ed Block, McAlester, \$12.00.

Five cases liquor from Danciger Bros., Kansas City, Missouri, to J. A. King, Tulsa, Oklahoma, \$60.00.

Five cases liquor from Danciger Bros., Kansas City, Missouri, to J. A. King, Tulsa, Oklahoma, \$60.00.

Ten cases liquor from Danciger Bros., Kansas City, Missouri, to J. A. King, Tulsa, Oklahoma, \$120.00.

Two baskets liquor from Danciger Bros., Kansas City, Missouri, to T. C. Griffin, Tulsa, Oklahoma, \$20.00.

Two cases liquor from C. Transfer Co., Kansas City, Missouri, to J. W. Boering, Tulsa, Oklahoma, \$20.00.
and that said complainant shall at once pay over to said R. E. Lozier for the use of the State dispensary of the State of Oklahoma the said agreed value of any of said articles which complainant may so fail to deliver over to defendants.

All of which is done in chambers at Muskogee, Oklahoma, this 16th day of September, 1908.

RALPH E. CAMPBELL,

Judge, United States Circuit Court for the Eastern District of the State of Oklahoma.

Filed Sept. 16, 1908.

L. G. DISNEY, *Clerk U. S. Circuit Court Eastern District Oklahoma.*

On November 23rd, 1909, there was filed in the Circuit Court the following bill:

UNITED STATES OF AMERICA,
STATE OF OKLAHOMA.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR
THE EASTERN DISTRICT OF OKLAHOMA.

No. 1225.

IN EQUITY.

THIXTON, MILLETT & COMPANY, *a corporation, Com-
plainant,*

vs.

S. W. STONE, *state dispensary agent*, JOHN HAYES, *as-
sistant counsel to the governor*, CLARK COMPTON, W.
F. BLAKEMORE, R. B. RAMSEY, *sheriff*, J. M.
BRUCKER, and GRANT HAMLIN, Defendants.

BILL OF COMPLAINT.

*To the Honorable Judges of the Circuit Court of the
United States for the Eastern District of Oklahoma.*

Your complainant, Thixton, Millett & Company, which
is a citizen of the United States, and of the State of Ken-
tucky, and which is a corporation duly incorporated under
and by virtue of the laws of the State of Kentucky, and is
a resident and inhabitant of the State of Kentucky, brings
this, its bill of complaint, against S. W. Stone, John
Hayes, Clark Compton, W. F. Blakemore, R. B. Ramsey,
J. M. Brucker, and Grant Hamlin hereinafter styled de-
fendants, and occupying the official positions hereinafter
more fully set forth, and all of which defendants are citi-
zens, residents and inhabitants of the State of Oklahoma in
the Eastern District thereof, except the defendants S. W.
Stone and John Hayes, who reside in the Western Dis-
trict thereof, and complaining of the said defendants and
each of them, your complainant says:

I.

That your orator is engaged in business as a dealer in
alcoholic and intoxicating liquors, and has its office and
place of business in the city of Louisville, in the State of

Kentucky, and has built up and enjoys a large and lucrative business in the sale of said liquors in the State of Kentucky, and a part of its business consists, in a large part, of the sale of liquors in the State of Kentucky to customers residing outside the State of Kentucky, including customers residing in the State of Oklahoma. That its principal method and custom of making shipments into other states, including the State of Oklahoma, is to receive mail orders for said shipments direct from its customers outside the state for sales and shipments of liquor to be made in Kentucky into said state, and after said orders accepted by your orator to deliver said liquors to various railroad companies and other common carriers transporting freight from said state of Kentucky to such other state for hire for transportation from said shipping point, to-wit: Louisville, in the said state of Kentucky, to the various points in the State of Oklahoma where said customers reside, the said common carriers agreeing to transport said liquors by interstate shipment from Louisville in said state of Kentucky, to said points in Oklahoma, and there to deliver to said customers in Oklahoma the said liquors; and in all cases where said liquors are shipped as aforesaid from said point in Kentucky to Oklahoma said sales are made outside the State of Oklahoma and delivered to the consignees in the said State of Oklahoma by the carrier, as aforesaid.

Your orator further shows that its custom is after delivering said liquors to said carrier for shipment as aforesaid in said State of Kentucky to Oklahoma to receive from the carrier a bill of lading, which bill of lading is generally made out in the following form, substantially, and forward said bill of lading to the purchaser, the said bill of lading being in substance about as follows:

"Received from.....in apparent good order, the following orders marked.....to be delivered in like good order. Louisville, Kentucky,by....."

Railway. To shippers order. Notify..... Marks
..... No..... Article..... Freight prepaid."

The railway company or other common carrier filling in the blanks so as to agree with the dates, name of purchaser, character of goods, and the name of the consignee to be notified and the point in the state of destination named in the bill of lading, and that the custom and understanding between the parties to said transaction is that it gives to the shipper the right to stop said goods at any time before said goods are delivered to the purchaser at their destination in Oklahoma, and before the surrender of the bill of lading and the goods are not delivered to said purchaser or consignee until they arrive at their destination and are not delivered to the consignees until the production and surrender of the said bill of lading, and the payment of the draft for the purchase price which is attached to said bill of lading by complainant at the time that the same is sent forward to some bank for the purpose of being delivered to the purchaser at the destination of said liquors upon the paying of said draft by said purchaser.

Your orator further shows that at this time complainant has received many orders for intoxicating liquors to be sold by it in Kentucky and shipped by carrier as aforesaid to various points in the Eastern District of Oklahoma to be delivered there to the consignees in the manner and form hereinbefore set out, and the legitimate profits of said orders so received by it for shipments to be made as aforesaid into the State of Oklahoma and the Eastern District thereof, will be largely in excess of two thousand five hundred dollars (\$2,500.00), and it has accepted said orders and expects in the proper and legitimate exercise of its right to engage in commerce with the citizens of Oklahoma, to continue its said business, and to earn its said legitimate profits, and to continue to accept orders at its office in Louisville for sales in Kentucky and deliveries in Oklahoma as aforesaid, and that it is not participating in

any unlawful sale of any intoxicating liquors in the State of Oklahoma, and is only engaged in its said legitimate business of engaging in interstate commerce, as aforesaid.

II.

Your orator further shows that the defendant Stone is the duly appointed and qualified dispensary agent of the State of Oklahoma, whose duty it is under the law to direct his subordinate agents in the seizure and confiscation of intoxicating liquors kept for any unlawful purposes within said state. That the defendant John Hayes is the duly appointed and qualified assistant counsel to the governor of the State of Oklahoma. That the defendant R. B. Ramsey is the duly elected and qualified sheriff of Muskogee County, Oklahoma, and defendants Brucker and Hamlin are deputy sheriffs, and the defendants W. F. Blakemore and Clark Compton are, or claim to be some kind of state enforcement officers and are employed by the defendant Stone in his official capacity as aforesaid, and are acting under and pursuant to the direction, control and supervision of the said defendant Stone, and said defendant Hayes, in the commission of the wrongs and trespasses on the property of plaintiff as hereinafter more fully set forth. That the defendants Stone and Hayes, claiming to be enforcing the provisions of a certain act of the legislature of the State of Oklahoma known as the Billups Bill, and otherwise known as the Enforcing Act, which alleged bill has for its object, or claims to have for its object, the prohibition and prevention of the bartering, selling or giving away of intoxicating liquors in the State of Oklahoma, and the enforcement of said law, have instructed the other defendants herein, and many other and numerous parties unknown to this complainant, that all liquor shipments made by this complainant in the manner and form hereinbefore set forth are illegal and in violation of said enforcement

act, and that said alleged act of the Oklahoma legislature prohibiting the bartering, selling or giving away of said intoxicating liquors applies to and includes within its provisions all shipments of liquors which are known as interstate shipments while the same are still in the hands of the carrier for transportation and delivery before the surrender of the bill of lading and delivery to the consignees, and which are made in the manner and form hereinbefore set out; and said Stone and Hayes and their other agents, acting under their instructions, directions and orders, have ordered, authorized and directed said Compton and Blakemore and numerous other parties whose names are unknown to complainant, to seize and confiscate and appropriate to their own use and to the use of the State of Oklahoma, all liquors so shipped by complainant in the manner and form hereinbefore set forth while the same are in the hands of the railway companies in the State of Oklahoma and before delivery to the consignees as aforesaid, and while in course of transportation as aforesaid, whereby it is their purpose and intention, and the intention and purpose of each of them to deprive complainant of the value and possession of said goods which they intend to ship as aforesaid, and prevent complainant from engaging in the business of making interstate shipments in the State of Oklahoma, as hereinbefore described, and said Compton and Blakemore, acting under the directions of said Stone and Hayes, have ordered and directed said Ramsey, sheriff as aforesaid, and said Brucker and Hamlin, to make such seizures, and said last named defendants are threatening to make such seizures.

III.

That heretofore upon divers dates and occasions during the fall of 1909, complainant pursuing its said method of doing business aforesaid, and following its right to engage in legitimate interstate commerce with citizens of Oklahoma,

did ship from the State of Kentucky to many persons residing within the State of Oklahoma at various points therein, and especially at Oklahoma City, certain intoxicating liquors aggregating in value over two thousand (\$2,000.00) dollars. That said shipments were made upon orders received and accepted in Kentucky, and the liquors were sold in Kentucky and delivered in said State of Kentucky to various railway companies and other carriers for transportation and delivery to said points in Oklahoma in the Western District thereof, and while said liquors which were so intended for delivery were in course of transportation and in the hands of carriers in said Oklahoma City before consummation of interstate shipment, and before delivery to consignees, certain parties claiming to be enforcement officers of the State of Oklahoma, acting under the immediate direction and control of the defendants Stone and Hayes, or claiming to act under their directions, and which said acts were subsequently ratified by the said defendants Stone and Hayes and approved by them, did seize said liquors under certain search warrants issued out of the court of a certain Justice of the Peace, to-wit: one William H. Zwick, and did undertake to confiscate said liquors while the same were such interstate shipments, and by force and arms deprived the said carriers who were in possession of said liquors of the possession thereof, and the said Stone and Hayes did publicly assert their intention, and do publicly assert their intention to continue to advise and instruct their agents and employees, and especially the other defendants named herein as enforcement officers, to continue to seize and confiscate all liquors which this complainant may hereafter make, while the same are in the hands of the common carriers and shipped in the manner and form hereinbefore set out, and while the same constitute a part of an interstate shipment of liquors. And your complainant further shows that the other defendants herein, to-wit: Compton and Blakemore

are threatening to advise and instruct the defendants Ramsey, Brucker and Hamlin, as sheriff and deputies, to continue to seize any and all liquors which may be shipped into the Eastern District of Oklahoma in the manner and form hereinbefore set out, and all of said defendants are asserting their intention to make such seizures, and that unless restrained by this court all of the said defendants will continue to seize and confiscate any and all liquors which may be shipped by complainant in the manner and form hereinbefore set out, and will necessitate a multiplicity of suits upon the part of this complainant, and great expense and outlay of money, which course of conduct, unless restrained will utterly deprive complainant of the privilege of carrying on its business of interstate commerce, to its irreparable loss and injury; and that unless restrained by this court the defendants will continue to make said unlawful seizure of interstate commerce shipments to be made by the complainant according to their asserted intention, and will thereby defeat this complainant of its constitutional right guaranteed to it under the laws and constitution of the United States of America to engage in interstate commerce between the states.

IV.

Your orator further shows that it has no adequate remedy at law for such threatened and contemplated seizures because under the laws of Oklahoma replevin will not lie for goods seized under search warrants, and if this complainant should undertake to contest each and every search warrant in the courts out of which they should issue, it would necessitate a continued course of litigation as hereinbefore set out.

V.

Your orator further shows that the alleged and pretended search warrants under which the defendants have been

seizing and confiscating the property of this complainant as hereinbefore described, and the pretended search warrants which they are contemplating seizing the shipments to be hereafter made under, are issued under the provisions of a certain act of the legislature of the State of Oklahoma known as the Billups Bill, but that none of the provisions of said Billups Bill have any application to interstate commerce shipments such as are being made by this complainant, and as it contemplates making hereafter, but that said Billups Bill insofar as the same is applied or intended to apply to interstate commerce shipments, is unconstitutional, void, and of no effect.

VI.

Your orator further shows that it is claimed by the defendants that all intoxicating liquors found in the State of Oklahoma which have been shipped by complainant in the manner and form hereinbefore set out, and even though still in the course of transportation and part of interstate commerce shipments, are subject to seizure and confiscation under the laws of Oklahoma, and said pretended seizures are made under and by virtue of said claim.

The premises considered, complainant prays that the defendants herein, or any other person or persons under their be enjoined and restrained from further advising, aiding, abetting, encouraging or instructing any of the other defendants herein, or any other person or persons under their control or within their employ, or within the employ of the State of Oklahoma, that it is illegal to make shipments of alcoholic liquors into the State of Oklahoma in the manner and form heretofore referred to, and that they be enjoined and restrained from advising, aiding or abetting, encouraging or instructing any of the other defendants herein, or any other person or persons in their employ, or in the employ of the State of Oklahoma, to seize any shipments that may now be in the hands of any common car-

rier, either in the Eastern District of Oklahoma or any other point in the State of Oklahoma which may have been shipped in the manner and form hereinbefore set out, and are still in the hands of said carriers for transportation and delivery to consignees, and which said shipments have been or may hereafter be made by this complainant in the manner and form hereinbefore set out.

Complainant further prays that the defendants Compton, Blakemore, Ramsey, Brucker and Hamlin, and all persons acting under their authority or control, be enjoined and restrained from seizing any shipments or parts of shipments of intoxicating liquors which have been or may hereafter be shipped by this complainant to consignees in the State of Oklahoma in the Eastern District in the manner and form hereinbefore set out while the same are in the hands of such carriers for transportation and before delivery to the consignees and surrender of the bill of lading and while said shipments are interstate shipments. That upon the final hearing of this cause the injunction herein prayed for may be made perpetual, and for such other and further and general relief as to your Honors may seem meet and just in the premises. And your orator further prays to grant unto your orator a writ of subpoena issued out of and under the seal of this honorable court, to be directed to the said S. W. Stone, dispensary agent, John Hayes, assistant counsel to the governor, W. F. Blakemore, Clark Compton, R. B. Ramsey, and J. F. Brucker and Grant Hamlin commanding them on a certain day and date under a certain penalty, in said writ personally to be and appear before your honors and this honorable court, and then and there a full, true and perfect answer make to all and every premises, and further to abide, stand by, and perform all orders made by this honorable court, and that in the meantime a temporary restraining order restraining and enjoining these defendants and each of them until the further order of this court from performing any and all

of the acts hereinbefore set out. Your orator further prays that this bill may be amended from time to time by adding the names of such parties thereto as causes therefor may arise, and the said parties are engaged with the other parties herein in assaults upon the property of this complainant in the manner hereinbefore set forth. And your orator will forever pray in the premises.

THIXTON MILLETT & Co., Inc.

By JNO. THIXTON, JR.,

President.

J. C. STONE and

GIDDINGS & GIDDINGS,

Solicitors for Complainant.

UNITED STATES OF AMERICA,

WESTERN DISTRICT OF OKLAHOMA.

Jno. Thixton, Jr., being duly sworn, deposes and says that he is President of the complainant, Thixton, Millett & Company, a corporation; that he has read the within and foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

JOHN THIXTON, JR.

Subscribed and sworn to before me this 22nd day of November, 1909.

MARY S. HILL,

Notary Public.

My commission expires Nov. 16, 1911.

SEAL

Filed Nov. 23, 1909.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern District, Oklahoma.

On December 20th, 1909, at the hearing on the application for temporary injunction, the following affidavit was filed.

UNITED STATES OF AMERICA,

STATE OF OKLAHOMA.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR
THE EASTERN DISTRICT OF OKLAHOMA.

No. 1225.

IN EQUITY.

THIXTON, MILLETT & COMPANY, *a Corporation, Com-
plainant,*

vs.

S. W. STONE, *State Dispensary Agent*, JOHN HAYES,
Assistant Counsel to the Governor, CLARK COMPTON,
et al, *Defendants.*

AFFIDAVIT.

Comes now John Thixton, Junior, and upon his oath states that he is the President of the complainant above named, Thixton, Millett & Company, which is a corporation duly incorporated under the laws of the State of Kentucky, and is a resident and inhabitant of the State of Kentucky, which corporation is engaged in the business of a dealer in alcoholic and intoxicating liquors.

Affiant shows that at this time, and for some considerable time prior thereto, the said corporation has been engaged in the business of making interstate commerce sales and shipments of liquors from the State of Kentucky into the State of Oklahoma, including the Eastern and Western Districts thereof, and its method of doing business is to receive mail orders from customers in the State of Oklahoma at its office in Louisville, Kentucky, and after it has decided to accept the orders it delivers the liquors to the common carrier at that point to be delivered to the consignee at his residence in the State of Oklahoma. That in every instance the said plaintiff receives from the carrier a bill of lading in about the following form:

“Received from.....in apparent good order, the

following orders marked.....to be delivered
in like good order. Louisville, Kentucky,.....by
.....Railway. To shippers order. Notify
.....MarksNo.
Article.....Freight prepaid."

the railway company or other carrier filling in the blanks so as to agree with the dates, name of purchaser, character of goods, and the name of the consignee. That the bill of lading is then forwarded to some bank at the place of destination and a draft for the purchase price is attached thereto, and upon the payment of the draft by the purchaser he receives his bill of lading and then receives the goods from the carrier.

Affiant further alleges that the plaintiff is not engaged in any unlawful sales of liquor, nor is it participating in any unlawful sales in the State of Oklahoma, and in all of its dealings with citizens of Oklahoma it intends to confine itself exclusively within the limits of the interstate commerce law, and to make all shipments bona fide interstate commerce shipments. Affiant alleges that at the time of the institution of this suit, and at this time, it has received many orders from citizens in the Eastern and Western Districts of Oklahoma for shipments of liquors, and which orders it has accepted, upon which its profits would exceed upon orders received from each district over the sum of two thousand dollars (\$2,000.) That for several months prior to the institution of this suit its business has been greatly crippled by reason of the fact that goods which it had shipped in the manner hereinbefore set out had been seized by the state enforcement officers, both in the Eastern and Western Districts, and that since this suit was brought, as your affiant is informed and believes, the state enforcement officers in the Eastern District have seized many goods at Muskogee, at South McAlester, at Sulphur, and at other points while the same were in the

hands of the carrier before delivery to the consignees, and which were shipped in the manner hereinbefore set out by various parties to purchasers in said district, and that since this suit was brought many goods similarly shipped and consigned have been seized by the state enforcement officers while in the hands of the carrier before delivery to the consignee which were interstate shipments, have been seized by the state enforcement officers.

That affiant is informed and believes that the defendants in this action, to-wit: defendants Compton, Blakemore, Ramsey, Brucker and Hamlin, have since this restraining order was issued, seized many thousands of dollars of goods in the town of Muskogee belonging to various parties which were shipped in the manner hereinbefore set out while the same were in the hands of the carrier, and affiant believes unless a temporary injunction is granted in this cause they will seize the goods of this complainant shipped in the manner hereinbefore set out.

JOHN THIXTON, JR.

Subscribed and sworn to before me this 16th day of December, 1909.

W. R. WAGNER,

Notary Public of County, State of Kentucky.
(SEAL.)

My commission expires Notary Public, Jefferson Co., Ky. My commission expires Feb. 13, 1912.

I hereby acknowledge service of the within and foregoing affidavit upon me this 18th day of December, 1909.

.....
Filed Dec. 20, 1909, L. G. Disney, Clerk U. S. Circuit Court, Eastern District, Oklahoma.

On December 20th, 1909, the following temporary injunction order was issued in said cause:

UNITED STATES OF AMERICA,

STATE OF OKLAHOMA.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR
THE EASTERN DISTRICT OF OKLAHOMA.

No. 1225.

IN EQUITY.

TEMPORARY INJUNCTION ORDER.

THIXTON, MILLETT & COMPANY, *a Corporation, Com-
plainant.*

vs.

S. W. STONE, *et al, Defendants.*

The above entitled cause came on for hearing before the court upon complainant's application for a temporary injunction on this, Monday, the 20th day of December, 1909, pursuant to a former order of this court. Complainant, Thixton, Millett & Company, a corporation, appeared by its solicitor of record, G. H. Giddings, and defendants S. W. Stone, John Hayes, Clark Compton, W. F. Blakemore, R. B. Ramsey, J. M. Brucker and Grant Hamlin, appeared by their solicitor, Fred S. Caldwell. And thereupon the complainant, after introducing its bill of complaint, duly verified, and affidavits in support thereof, rested its case, and defendants offered no testimony in contradiction thereof.

Thereupon the cause is argued both by counsel representing the complainant and the defendants, and the court having heard the argument of counsel, and being fully advised in the premises, finds that the relief prayed for by this complainant should be granted, and that a temporary injunction as prayed for should issue.

It is therefore ordered this 20th day of December, 1909, and adjudged that the defendants, S. W. Stone, state dispensary agent, John Hayes, assistant counsel to the governor, R. B. Ramsey, sheriff of Muskogee County, Oklahoma, Clark Compton, W. F. Blakemore, J. M. Brucker and Grant Hamlin, and each of them, and all persons acting by, through or under them, or either of them, are hereby

enjoined and restrained until further order of this court from seizing or causing to be seized, either directly or indirectly, or ordering or directing any person to seize any intoxicating liquors shipped by the complainant, Thixton, Millett & Company, a corporation, from the state of Kentucky to actual, bona fide consignees within the Eastern District of the State of Oklahoma, while the same is in the possession of the common carrier, and before the same have been delivered, either actually or constructively to such consignees. This order to become effective upon the complainant, Thixton, Millett & Company, executing and filing a good and sufficient bond within ten days from this date in the sum of five thousand dollars (\$5,000,) to be approved by the clerk of this court, indemnifying the defendants herein against any damages they may sustain in the event it shall be determined this order should not have been issued.

It is further ordered that the complainant, Thixton, Millett & Company, have ten days in which to execute and file said bond, and that in the meantime the restraining order heretofore issued by this court shall remain in full force and effect, to which order and decree the defendants and each of them at the time duly excepted on the ground that said order and decree is contrary to law, and that the complainant's bill does not state facts sufficient to constitute a cause of action against the defendants or any of them, and that said order and decree is in violation of Section 720 of the revised statutes of the United States, and in violation of the Eleventh Amendment to the Constitution of the United States.

RALPH E. CAMPBELL,

Judge.

O. K. GIDDINGS & GIDDING.,
Solicitors for Complainant.

O. K. FRED S. CALDWELL,
Solicitor for Respondents.

Filed Dec. 20, 1909. L. G. Disney, Clerk U. S. Circuit Court, Eastern District Oklahoma.

On December 27th, 1909, there was filed in said cause the following stipulation:

UNITED STATES OF AMERICA,
STATE OF OKLAHOMA.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR
THE EASTERN DISTRICT OF OKLAHOMA.

No. 1225.

IN EQUITY.

THIXTON, MILLETT & COMPANY, *a Corporation, Com-
plainant,*

vs.

S. W. STONE, *et al, Defendants.*

STIPULATION.

Come now the parties by their attorneys of record and agree and stipulate in open court to the following state of facts in this case, to-wit: That all seizures referred to in complainant's bill, and about which the complainant is complaining were made under and pursuant to search and seizure warrants issued out of state courts of competent jurisdiction to issue said warrants under and pursuant to provisions of Sections 5 and 6 Article 3 of Chapter 69, Session Laws of 1907 and 1908 of the State of Oklahoma. And it is further stipulated and agreed that the relief which the complainant herein is asking is that the defendants herein be enjoined from executing such search warrants so to be issued by said state courts under and pursuant to said facts and prosecuting the same, in all cases where the execution of such search and seizure warrants necessitates the taking and seizing of intoxicating liquors shipped into the state of Oklahoma by complainant herein by interstate commerce, where such inter-

state shipments of intoxicating liquors are in the hands of the interstate carrier, and prior to the delivery thereof by the interstate carrier to the consignees at the point of destination in the State of Oklahoma under the terms and provisions of the contract of interstate shipment.

GIDDINGS & GIDDINGS,
Attorneys for Complainant.
FRED S. CALDWELL,
Solicitor for Respondents.

Filed Dec. 27, 1909. L. G. Disney, Clerk U. S. Circuit Court, Eastern Dist. Okla.

On January 6th, 1910, the defendants filed their demurrer to the bill herein as follows:

UNITED STATES OF AMERICA,
STATE OF OKLAHOMA,
EASTERN DISTRICT—SS.

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR SAID DISTRICT.
NO. 1225.

IN EQUITY.

THIXTON, MILLETT & CO., a Corporation, Complainant.
vs.

S. W. STONE, *State Dispensary Agent*, JOHN M. HAYES,
Assistant Counsel to the Governor, CLARK COMPTON,
W. F. BLAKEMAN, R. B. RAMSEY, *Sheriff*, J. M.
BRUCKER and GRANT HAMLIN, *Defendants*.

DEMURRER FOR LACK OF JURISDICTION AND
EQUITY.

These respondents, S. W. Stone, John Hayes, Clark Compton, W. F. Blakeman, R. B. Ramsey, Sheriff, J. M. Brucker and Grant Hamlin, by protestation, not confessing or acknowledging all, or any, of the matters or things in the said bill of complaint contained, to be true, in such

manner as the same are therein set forth and alleged demur to the said bill; and for cause of demurrer show:

I.

That it appears by the complainants' own showing by the said bill that they are not entitled to the relief prayed by said bill against these respondents, or any of them.

II.

That it appears from said complainants' bill of complaint that their business operations which they seek to have protected by decree of this Honorable Court, are carried on and conducted in direct violation of the penal laws of the United States of America, to-wit, in violation of Sections 238, 239 and 240 of an Act of Congress of March 4th, 1909. (35 Stat. L. 1136-37.)

III.

That it appears from complainants' said bill of complaint that this Court has no jurisdiction to hear and determine this action, and that the relief prayed for is sought in direct violation of the Eleventh Amendment to the Constitution of the United States, and of Section 720 of the Revised Statutes of the United States.

IV.

That Complainants' said bill of complaint is wholly without equity.

WHEREFORE, and for divers other good causes of demurrer in said bill, these respondents demur thereto, and they and each of them pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to complainants' said bill; and they and each of them humbly pray to be hence dismissed with their reasonable costs in their half sustained.

FRED S. CALDWELL,

Solicitor for Respondents.

VERIFICATION.

STATE OF OKLAHOMA—ss.

Fred S. Caldwell, being first duly sworn, on oath says: That he is the solicitor for the respondents to the foregoing demurrer in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point of law; and on behalf of said respondents, and each of them, says, that the same is not interposed for delay.

FRED S. CALDWELL.

Subscribed and sworn to before me this 6th day of January, 1910.

L. G. DISNEY, *Clerk.*

By OTIS LORTON, *Deputy.*

(SEAL.)

My Com. Exp.

Filed Jan. 6, 1910. L. G. Disney, Clerk U. S. Circuit Court Eastern Dist. Okla.

On February 1st, 1910, there was filed in said cause the following supplemental bill:

UNITED STATES OF AMERICA,

STATE OF OKLAHOMA—ss.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF OKLAHOMA.

SUPPLEMENTAL BILL OF COMPLAINT.

THIXTON, MILLETT & COMPANY, *a Corporation, Complainant.*

vs.

S. W. STONE, *et al, Defendant.*

Comes now the complainant, Thixton, Millett & Company, a corporation, and by leave of the court files this its supplemental bill of complaint herein, and complaining of the defendant John Hayes, and also complaining of S. W. Fenton, a resident of the Eastern District of

Oklahoma, and of H. F. Newblock, the duly elected and qualified sheriff of Tulsa County in the Eastern District of Oklahoma and State of Oklahoma, and of Harry Stine, the duly elected and qualified sheriff of Creek County, in the Eastern District of the State of Oklahoma, and of John J. Jordan, the duly elected and qualified sheriff of Washington County in the Eastern District of Oklahoma, Sheriff of Okmulgee County, Oklahoma, shows to the court that since the original restraining order was issued in this cause, and while the same was in full force and effect, the defendant John Hayes, with full knowledge of said order and in violation thereof, on or about the 23rd day of December, 1909, did induce, aid, advise and encourage the said H. F. Newblock, the sheriff of Tulsa County, Oklahoma, and one S. W. Fenton, who was then and there claiming to be an enforcement officer in the employ of the State of Oklahoma to enforce the prohibition laws of said state, and who was then and there acting under the instructions and directions of the said John Hayes, to seize certain intoxicating liquors which were then and there in the possession of the Atchison, Topeka & Santa Fe Railway at Tulsa in Tulsa County, Oklahoma, as common carrier, and which said goods had theretofore been shipped by the complainant in this cause to various consignees at Tulsa who had ordered the same in the manner and form fully set forth in the bill of complaint herein, and before the same had been delivered to the consignees, before the surrender of the bill of lading, while said goods were interstate commerce shipments and were under the protection of the interstate commerce law, and of the temporary restraining order issued by this court against the said John Hayes, which was then in full force and effect; and said Newblock as said sheriff, with full notice of the said order, claiming to act under certain search warrants issued out of the County Court of Tulsa County, took said liquors into his possession and now holds the same, or claims to hold the

same under said pretended search warrants, and the said Newblock has openly asserted his intention as sheriff to continue to seize all liquors which may be shipped by the complainant into said Tulsa County in the manner and form hereinbefore set forth.

Complainant further shows that the said John Hayes on or about the 21st day of December, 1909, while said restraining order was in full force and effect, did induce one John J. Jordan, who was then and there the duly elected and qualified sheriff of Washington County, Oklahoma, in the Eastern District to seize certain intoxicating liquors which were consigned by this complainant in the manner and form hereinbefore set forth, to certain parties at Bartelsville, while the same were in the possession of the common carrier and before delivery to the consignees, and before the surrender of the bill of lading, and while the same were interstate shipments and under the protection of the restraining order issued in this cause, and said John J. Jordan a sheriff of said Washington County is openly asserting his intention to continue to make such seizure of goods which this complainant intends to ship into said county; and that on or about January 12, 1910, the said Newblock did also make certain seizures in the town of Tulsa under the directions of the said Fenton and the said Hayes, of intoxicating liquors consigned to certain parties in said town by this complainant, while the same were in the possession of the common carrier, and while the same were interstate commerce shipments and under the protection of said restraining order. That unless restrained, the said Newblock and Jordan, sheriffs as aforesaid and.....will continue to make such seizures of goods so to be shipped by this complainant into said counties in the Eastern District, and the said Fenton will continue to encourage, aid and assist in making such seizures, and that unless punished for contempt by this

court the said Hayes will continue to encourage, aid, advise and assist other parties in the seizure of this complainant's goods.

Complainant further shows that on or about the 23rd day of December, 1909, one Wm. E. Robinson, who was then and there the duly elected and acting sheriff of Okmulgee County in the Eastern District of the State of Oklahoma, and also on January 5, 1910, the said Wm. E. Robinson as sheriff as aforesaid, acting, as your complainant is informed and believes, under the direction of the defendant, John Hayes, did seize certain intoxicating liquors which had been shipped in the manner and form set forth in said bill of complaint, to various parties as consignees in the town of Beggs in said Okmulgee County, while the same were in the possession of the common carrier, to-wit: the railway company, for the purpose of transportation and delivery to the said consignees, and before delivery to said consignees and the surrender of the bill of lading, and while the same was under the protection of the interstate commerce law and under the protection of said restraining order, and the said Wm. E. Robinson, is threatening, as sheriff, by himself and through his deputies, to continue to make seizures of all goods shipped by this complainant into said county in the manner and form hereinbefore set forth.

Your complainant further shows that on or about December 28, 1909, one.....Ridenour, who was then the duly elected and qualified sheriff of Craig County, Oklahoma, acting under the direction and instructions of the defendant, John Hayes, as this complainant is informed and believes, did seize certain intoxicating liquors shipped by this complainant in the manner and form hereinbefore set forth, to certain consignees in the town of Vinita in said county, while the same were in the possession of the railway company in course of transportation, and before surrender of the bill of lading and delivery to the con-

ignees, while the same were interstate commerce shipments, and said.....Ridenour as sheriff is openly asserting his intention to continue to make such seizures.

WHEREFORE this complainant prays that the said Newblock, Fenton, Jordan, Stine and Ridenour may be made parties to this suit, and that the temporary injunction now in force may be extended to and include said parties, and that subpoenas may issue to said parties requiring them to appear before this court upon the final hearing of this cause, and that upon final hearing this injunction may be made perpetual as to said additional defendants as well as to all the other defendants in this cause.

THIXTON, MILLETT & Co.,

Complainant.

By GIDDINGS & GIDDINGS,

Its Attorneys.

I, G. H. Giddings, do upon my oath state that I am one of the attorneys for the complainant herein, and that I am informed and believe that the facts set forth in the foregoing supplemental bill of complaint are true.

GEO. H GIDDINGS.

Subscribed and sworn to before me this 31 day of January, 1910.

MARY S. HILL,

Notary Public.

SEAL

My commission expires Nov. 16, 1911.

Filed Feb. 1, 1910.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern District, Okla.

On February 7th, 1910, there was entered in said cause the following order overruling respondents' demurrer, and

granting a temporary injunction against respondents named in the supplemental bill.

UNITED STATES OF AMERICA,
STATE OF OKLAHOMA, ss.
EASTERN DISTRICT.

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR SAID DISTRICT.

No. 1225.

THIXTON, MILLETT & COMPANY, *a corporation*, Com-
plainant,

vs.

S. W. STONE, *State Dispensary Agent*, JOHN M. HAYS,
Assistant Counsel to the Governor, CLARK COMPTON,
W. F. BLAKEMORE, R. B. RAMSEY, *Sheriff*, J. M.
BRUCKER and GRANT HAMLIN, *Defendants*.

ORDER OVERRULING RESPONDENTS' DEMURRER
AND GRANTING TEMPORARY INJUNCTIONS ..
AGAINST RESPONDENTS IN SUPPLE-
MENTAL BILL.

The above entitled cause came on for hearing before the Court upon complainant's application for a temporary injunction against the respondents in complainant's supplemental bill, and upon the original respondents' demurrer to complainant's original bill, on Monday, the 7th day of February A. D., 1910, pursuant to a former order of this Court and the agreement of the parties hereto made and announced in open court. Complainants appeared by their solicitors, Giddings & Giddings, and the respondents S. W. Stone, John Hayes, Clark Compton, W. F. Blakemore, R. B. Ramsey, J. M. Brucker and Grant Hamlin, appeared by their solicitor, Fred S. Caldwell.

Whereupon the Court, being fully advised in the premises, by an examination of complainant's original bill and supplemental bill, finds that the demurrer of said original

respondents to complainant's original bill should be overruled and that a temporary injunction as prayed for by complainants should issue against the respondents in complainants' supplemental bill, namely: H. F. Newblock, the sheriff of Tulsa County; Harry Stine, sheriff of Creek County; John J. Jordan, sheriff of Washington County; Henry E. Ridenour, sheriff of Craig County; Wm. E. Robinson, sheriff of Okmulgee County, and S. W. Fenton, an enforcement officer of the State of Oklahoma.

It is therefore ordered on this the 7th day of February, A. D. 1910, that the demurrer of said original respondents be, and the same is hereby overruled, to which said order and ruling of the Court said respondents, and each of them, duly excepted at the time, and still except, and it is hereby further ordered that said respondents to said supplemental bill, namely: H. F. Newblock, the sheriff of Tulsa County, Oklahoma; Harry Stine, sheriff of Creek County, Oklahoma; John J. Jordan, sheriff of Washington County; Henry E. Ridenour, sheriff of Craig County, Oklahoma; Wm. E. Robinson, sheriff of Okmulgee County, and S. W. Fenton, an enforcement officer of the State of Oklahoma, and each of them and all persons acting by, through or under them, or either of them, are hereby enjoined until the further order of the Court from seizing or causing to be seized, or ordering or directing any person to seize, either directly or indirectly, any intoxicating liquors shipped by the complainants, Thixton, Millett & Company, a corporation, from points outside the State of Oklahoma, to actual bona fide consignees within the Eastern District of the State of Oklahoma, while in the possession of the interstate carrier and before the same have been delivered, either actively or constructively, to such bona fide consignees. Provided, however, that this order shall not apply to any liquor shipped in violation of Section 3449 of the Revised Statutes of the United States, or to liquors shipped in violation of Sections 238, 239 and 240

or the Act of Congress of March 4th, 1909, 35 Stat. L. 1136-7, or to any such liquors which are adulterated or misbranded within the meaning of the act of Congress of June 30th, 1906, ch. 3915, 34 Stat. L. 768, commonly known as the Pure Food and Drug Act, or to any such liquors shipped in violation of any other Act of Congress.

This order to become effective as to said respondents in complainants' said supplemental bill upon the complainants executing and filing a good and sufficient bond within fifteen days from the entry of this order in the sum of Five Thousand Dollars, said bond to be approved by the Clerk of this Court, and conditioned to indemnify the respondents herein, and each of them, against any damage that they, or any of them, may sustain in the premises in the event it shall be finally determined that this order should not have been issued.

It is further ordered that during the period of fifteen days hereinabove given complainants in which to execute and file said bond, the restraining order heretofore issued herein shall remain in full force and effect.

To all of which order and decree the respondents both to the original bill and the supplemental bill herein, and each of them, at the time duly excepted on the ground that said order and decree is contrary to law in that neither complainants' bill nor complainants' supplemental bill states facts sufficient to constitute a cause of action against said respondents, or any of them, and that said order and decree is in violation of Section 720 of the Revised Statutes of the United States, and in violation of the Eleventh Amendment to the Constitution of the United States, and is in violation of Sections 238, 239 and 240 of the United States Penal Code, the same being Act of Congress of March 4, 1909, 35 Stat. L. 1136-7. And from said order and decree the said respondents and each of them prayed an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, which said appeal is

duly granted and allowed. It is further ordered that respondents and each of them shall have until the March, 1910, Rule Day within which to make answer to complainants original bill and supplemental bill of complainant.

RALPH E. CAMPBELL,

Judge.

Filed Feb. 18, 1910.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern District, Okla.

On December 11th, 1909, there was filed in the U. S. Circuit Court the following bill:

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR
THE EASTERN DISTRICT OF OKLAHOMA.

BILL OF COMPLAINT.

DAN DANCIGER, ABE DANCIGER, JACK DANCIGER,
M. O. DANCIGER, AND JOSEPH DANCIGER, *Co-*
partners trading under the firm name of The Harvest
King Distilling Company and Danciger Brothers, Com-
plainants,

vs.

S. W. STONE, *Superintendent of the State Agency*, R. B.
RAMSEY, *Sheriff of Muskogee County, Oklahoma*; W.
F. BLAKEMORE, *Deputy Sheriff, Muskogee County,*
Oklahoma; CLARK COMPTON, *Deputy Sheriff Musko-*
gee County, Oklahoma, Respondents.

To the Honorable Judges of the Circuit Court of the
United States for the Eastern District of Oklahoma:

Dan Danciger, Abe Danciger, Jack Danciger, M. O. Danciger and Joseph Danciger, co-partners trading under the firm name of The Harvest King Distilling Company and Danciger Brothers, citizens and inhabitants of the State of Missouri, residing in Kansas City in said State, bring this, their Bill of Complaint against S. W. Stone, Super-

intendent of the State Agency, R. B. Ramsey, Sheriff of Muskogee County, Oklahoma; W. F. Blakemore, Deputy Sheriff Muskogee County, and Clark Compton, Deputy Sheriff, Muskogee County, Oklahoma, citizens and inhabitants of the State of Oklahoma, and in the Western District thereof, except the defendant, S. W. Stone, who resides in the Western District thereof, and complaining of the said defendants and each of them, your Complainants say:

I.

That complainants are engaged in the business of dealing in alcoholic and intoxicating liquors and have their office and place of business in Kansas City in the State of Missouri, and have built up and enjoy a large and lucrative business in the sale of liquors in the State of Missouri, and that a large part of their business consists in the sale of liquors in the State of Missouri to customers residing outside the State of Missouri, including customers residing in the State of Oklahoma. That their principal method and custom of making shipments into other states, including the State of Oklahoma, is to receive mail orders for said shipments from its customers outside of the state for sales and shipments of liquors to be made in Missouri, and directed to such other states. That after said orders are accepted by complainants, they are delivered at Kansas City, Missouri, to various railroad companies and other common carriers transporting freight from said State of Missouri to such other states, and more particularly to various points in the State of Oklahoma, where said customers reside. That in all cases where goods are sold and delivered to the carrier in Kansas City in the State of Missouri, the said sales are made outside of the State of Oklahoma and the goods are delivered to the carrier for the purpose of making delivery to the consignee only.

Complainants further show that after delivering said liquors to the carriers for shipment as aforesaid in said State of Missouri to Oklahoma, they receive from the carrier a bill of lading, which bill of lading is generally made out in the following form, substantially, and forward said bill of lading to a bank or some responsible person at the home of the consignee, attached to which is a sight draft for the purchase price of the liquor. The customer pays the draft and receives the bill of lading, and presents the same to the railroad company and receives the shipment. This method, as above stated, is known to the railroad and to the public generally by the various terms of "shippers' order," "Order notify," and "Sight draft and bill of lading," method. On each box or package thus sent out is marked with either the full name or initials of the consignees and a specific number; that the bill of lading contains the full name of the consignee together with the number marked upon the box or package. The bill of lading used by complainants reads as follows:

"Received from Harvest King, in apparent good order, the following articles marked below to be delivered in like good order. Kansas City, Mo.,.....190....by.....
R. R. To shippers order, notify.....at.....Marks

No.	Article	Weight.
-----	---------	---------

Return shipments in ten days if not accepted. Freight prepaid No."

The railway company, or the common carrier, fills in the blanks so as to agree with the dates, name of purchaser, character of goods, and the name of the consignee to be notified and the point in the state of destination named in the bill of lading, and the custom and understanding between the parties to said transaction is that it gives to the shipper the right to stop said goods at any time before said goods are delivered to the purchaser at their destination in Oklahoma, and before the surrender of the bill of lading and the goods are not delivered to said purchaser

or consignee until they arrive at their destination and are not delivered to the consignees until the production and surrender of the said bill of lading.

Your orator further shows that at this time complainants have received many orders for intoxicating liquors to be sold by them in Missouri and shipped by carrier as aforesaid to various points in the Eastern District of Oklahoma to be delivered there to the consignees in the manner and form hereinbefore set out, and the legitimate profits of said orders so received by them for shipments to be made as aforesaid into the State of Oklahoma and the Eastern District thereof, will be largely in excess of Two Thousand Five Hundred Dollars (\$2,500.00), and they have accepted said orders and expects in the proper and legitimate exercise of its right to engage in commerce with the citizens of Oklahoma, to continue their said business, and to earn their said legitimate profits, and to continue to accept orders at their office in Kansas City for sales in Missouri and deliveries in Oklahoma as aforesaid and that it is not participating in any unlawful sale of intoxicating liquors in the State of Oklahoma, and is only engaged in its said legitimate business of engaging in interstate commerce, as aforesaid.

II.

Your orator further shows that the defendant Stone is the duly appointed and qualified dispensary agent of the State of Oklahoma, whose duty it is under the law to direct his subordinate agents in the seizure and confiscation of intoxicating liquor kept for any unlawful purposes within said state. That the defendant, R. B. Ramsey is the duly elected and qualified sheriff of Muskogee County, Oklahoma, and the defendants Blakemore and Compton are deputy, and the defendants W. F. Blakemore and Clark Compton also are, or claim to be, some kind of state enforcement officers and are employed by the defendant

Stone in his official capacity as aforesaid, and are acting under and pursuant to the direction, control and supervision of the said defendant Stone, in the commission of the wrongs and trespasses on the property of plaintiff as hereinafter more fully set forth. That the defendant Stone, claiming to be enforcing the provisions of a certain act of the legislature of the State of Oklahoma known as the Billups Bill, and otherwise known as the Enforcing Act, which alleged bill has for its object, or claims to have for its object, the prohibition and prevention of the bartering, selling or giving away of intoxicating liquors in the State of Oklahoma, and the enforcement of said law, has instructed the other defendants herein, and many other and numerous parties unknown to these complainants, that all liquor shipments made by these complainants in the manner and form hereinbefore set forth are illegal and in violation of said enforcement act, and that said alleged act of the Oklahoma legislature prohibiting the bartering, selling or giving away of said intoxicating liquors applied to and includes within its provisions all shipments of liquors which are known as interstate shipments while the same are still in the hands of the carrier for transportation and delivery before the surrender of the bill of lading and delivery to the consignees, and which are made in the manner and form hereinbefore set out; and said Stone, and his other agents, acting under their instructions, directions and orders, have ordered, authorized and directed said Compton and Blakemore and numerous other parties whose names are unknown to complainant, to seize and confiscate and appropriate to their own use and to the use of the State of Oklahoma all liquors so shipped by complainants in the manner and form hereinbefore set forth while the same are in the hands of the railway companies in the State of Oklahoma and before delivery to the consignees as aforesaid, and while in course of transportation as aforesaid, whereby it is their purpose and intention,

and the intention and purpose of each of them to deprive complainants of the value and possession of said goods which they intend to ship as aforesaid, and prevent complainants from engaging in the business of making interstate shipments in the State of Oklahoma, as hereinbefore described.

III.

Your orator further shows that heretofore the complainants pursuing their said business and following their right to engage in legitimate interstate commerce with citizens of Oklahoma, did ship to many persons residing within the State of Oklahoma, and more particularly customers residing in Muskogee, Oklahoma, large quantities of intoxicating liquors. That the respondents, Compton and Blakemore, acting under the immediate direction and control of respondent S. W. Stone, and further acting under color of their authority as Deputy Sheriffs of Muskogee County, Oklahoma, under the immediate direction and control of the respondent, Ramsey, did, on the 6th and 7th days of December, 1909, seize from the railroad warehouses in Muskogee, Oklahoma, a great quantity of intoxicating liquor by force and arms depriving the said carriers who were in possession of said liquors of the possession thereof; said liquors having been sold and shipped in the manner and form above set out. And your complainants further show that the said S. W. Stone is threatening to order further seizures of liquors consigned by these complainants and sold and shipped in the manner and form above set out, and while said goods are still articles of interstate commerce. That the said respondents Ramsey, Blakemore and Compton have threatened to further seize from the hands of the carriers all such goods as may be shipped by these complainants while said goods are still in the hands of the carriers, if such goods are shipped in the manner and form herein set out.

IV.

Your orator further shows that complainants have no adequate remedy at law for such threatened and contemplated seizures because under the laws of Oklahoma replevin will not lie for goods seized under search warrants, and if this complainant should undertake to contest each and every search warrant in the courts out of which they should issue, it would necessitate a continued course of litigation, as hereinbefore set out.

V.

Your orator further shows that the property rights involved herein and denied by these respondents is very great and largely in excess of two thousand five hundred dollars (\$2,500.00), exclusive of all interest and costs.

VI.

Your orator further shows that the alleged and pretended search warrants under which the defendants have been seizing and confiscating the property of these complainants as hereinbefore described, and the pretended search warrants which they are contemplating seizing the shipments to be hereafter made under, are issued under the provisions of a certain act of the legislature of the State of Oklahoma known as the Billups Bill, but that none of the provisions of said Billups Bill have any application to interstate commerce shipments such as are being made by this complainant, and as it contemplates making hereafter, but that said Billups Bill insofar as the same is applied or intended to apply to interstate commerce shipments, is unconstitutional, void, and of no effect.

VII.

Your orator further shows that it is claimed by the defendants that all intoxicating liquors found in the State of Oklahoma which have been shipped by complainant in

the manner and form hereinbefore set out, and even though still in the course of transportation and part of interstate commerce shipments, are subject to seizure and confiscation under the laws of Oklahoma, and said pretended seizures are made under and by virtue of said claim.

The premises considered, complainant prays that the defendant, S. W. Stone, dispensary agent, be enjoined and restrained from further advising, aiding, abetting, encouraging or instructing any of the other defendants herein, or any other person or persons under his control or within his employ, or within the employ of the State of Oklahoma, that it is illegal to make shipments of alcoholic liquors into the State of Oklahoma in the manner and form heretofore referred to, and that he be enjoined and restrained from advising, aiding or abetting, encouraging or instructing any of the other defendants herein, or any other person or persons in his employ, or in the employ of the State of Oklahoma, to seize any shipments that may now be in the hands of any common carrier, either in the Eastern District of Oklahoma or any other point in the State of Oklahoma which may have been shipped in the manner and form hereinbefore set out, and are still in the hands of the carriers for transportation and delivery to consignees, and which said shipments have been or may hereafter be made by the complainants in the manner and form hereinbefore set out.

Complainants further pray that the defendants, Compton, Blakemore and Ramsey, and all persons acting under their authority or control, be enjoined and restrained from seizing any shipments or parts of shipments of intoxicating liquors which have been or may hereafter be shipped by these complainants to consignees in the State of Oklahoma, in the Eastern District, in the manner and form hereinbefore set out, while the same are in the hands of such carriers for transportation and before delivery to the consignees and surrender of the bill of lading and while said

shipments are interstate shipments. That upon the final hearing of this cause the injunction herein prayed for may be made perpetual, and for such other and further and general relief as to your Honors may seem meet and just in the premises.

And your orator further prays to grant unto your orators a writ of subpoena issued out of and under the seal of this Honorable court, to be directed to the said S. W. Stone, dispensary agent, W. F. Blakemore, Clark Compton and R. B. Ramsey, commanding them on a certain day and date and under a certain penalty, in said writ personally to be and appear before your honors and this honorable court, and then and there a full, true and perfect answer make to all and every premises, and further abide, stand by, and perform all orders made by this honorable court, and that in the meantime a temporary restraining order restraining and enjoining these defendants and each of them until the further order of this court from performing any and all of the acts hereinbefore set out. Your orator further prays that this bill may be amended from time to time by adding the names of such parties thereto as causes therefor may arise, and the said parties are engaged with the other parties herein in assaults upon the property of these complainants in the manner hereinbefore set forth. And your orator will forever pray in the premises.

E. H. BUSICK,

Solicitor for Complainants.

UNITED STATES OF AMERICA,

EASTERN DISTRICT OF OKLAHOMA—SS.

E. H. Busick, being duly sworn, deposes and says that he is familiar with the matters and things stated in the foregoing complaint, and that the facts therein stated, he is informed and verily believes to be true.

E. H. BUSICK.

Subscribed and sworn to before me this 11th day of
December, 1909.

L. G. DISNEY,

Clerk U. S. Circuit Court Eastern District Oklahoma.

By A. S. FARNUM,

Deputy Clerk.

(SEAL.)

Filed Dec. 11, 1909.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern District, Okla.

On January 6th, 1910, there was filed in said cause the
following objections to the issuance of a temporary in-
junction:

UNITED STATES CIRCUIT COURT,

STATE OF OKLAHOMA.

EASTERN DISTRICT—SS.

IN THE UNITED STATES CIRCUIT COURT WITHIN AND FOR
SAID DISTRICT.

No. 1232.

IN EQUITY.

DAN DANCIGER, *et al*, *Complainants*,

vs.

S. W. STONE, *et al*, *Respondents*.

OBJECTION TO THE ISSUANCE OF A TEMPORARY
INJUNCTION.

Come now the respondents herein, and each of them, by
their solicitor, Fred S. Caldwell, and object to the issuance
of a temporary injunction as prayed for by complainants,
for the following reasons, to-wit:

Said complainants, prior to the filing of their bill of
complaint in this cause, filed a similar bill of complaint in
this Honorable Court, the same being equity No. 1016. And
in their bill of complaint in said case No. 1016, com-

plainants allege and state that their business in the State of Oklahoma is a mail order business, obtained by them in response to circulars, solicitations, letters and price lists, sent by them through the United States Mail to persons throughout the State of Oklahoma, and this Honorable Court has heretofore held in said case No. 1016 that complainants' said acts in so soliciting sales of intoxicating liquors in the State of Oklahoma by means of such circulars, price lists, letters, etc., are violations of the criminal laws of the State of Oklahoma, and that therefore, complainants are not entitled to any relief in a court of equity; and these respondents further say that although it is not alleged by complainants in this their present bill, said complainants' business in the State of Oklahoma which they seek to have protected by decree of injunction issued out of this Honorable Court, is procured and obtained by complainants by means of and in direct response to solicitations, circulars, advertisements, and letters, sent by complainants through the United States mail to various and sundry persons throughout the State of Oklahoma, and particularly to various and sundry persons within the Eastern District of the State of Oklahoma, and in proof of this assertion respondents offer in evidence complainants' bill in said case No. 1016 and the affidavit of John F. Elder.

WHEREFORE, respondents say complainants are not entitled to any relief in a court of equity, and that the temporary injunction herein prayed for by them, ought not to issue.

FRED S. CALDWELL,
Solicitor for Respondents.

Filed January 6th, 1910.

L. G. DISNEY,
Clerk U. S. Circuit Court, Eastern District, Okla.

On January 6th, 1910, there was filed in said cause by the respondents the following demurrer:

UNITED STATES OF AMERICA,
STATE OF OKLAHOMA,
EASTERN DISTRICT—SS.

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR SAID DISTRICT.

No. 1232.

DAN DANCIGER, ABE DANCIGER, JACK DANCIGER,
M. O. DANCIGER, and JOSEPH DANCIGER, *Co-*
partners, trading under the firm name of The Harvest
King Distilling Company and Danciger Brothers, Com-
plainants,

vs.

S. W. STONE, *Superintendent of the State Agency, R. B.*
RAMSEY, Sheriff of Muskogee County, Oklahoma; W. F.
BLAKEMORE, Deputy Sheriff of Muskogee County, Ok-
lahoma; CLARK COMPTON, Deputy Sheriff Muskogee
County, Oklahoma, Respondents.

DEMURRER FOR LACK OF JURISDICTION AND
EQUITY.

These respondents, S. W. Stone, R. B. Ramsey, W. F. Blackmore and Clark Compton, by protestation, not confessing or acknowledging all, or any, of the matters or things in the said bill of complaint contained, to be true, in such manner as the same are therein set forth and alleged, demur to the said bill; and for cause of demurrer show:

I.

That it appears by the complainants' own showing by the said bill that they are not entitled to the relief prayed by said bill against these respondents, or any of them.

II.

That it appears from said complainants' bill of complaint that their business operations which they seek to have protected by decree of this Honorable Court, are carried on and conducted in direct violation of the penal laws of the United States of America, to-wit, in violation of Sections 238, 239 and 240 of an Act of Congress of March 4th, 1909. (35 Stat. L. 1136-7.)

III.

That it appears from complainants' said bill of complaint that this court has no jurisdiction to hear and determine this action, and that the relief prayed for is sought in direct violation of the Eleventh Amendment to the Constitution of the United States, and of Section 720 of the Revised Statutes of the United States.

IV.

That complainants' said bill of complaint is wholly without equity.

WHEREFORE, and for divers other good causes of demurrer in said bill, these respondents demur thereto, and they and each of them pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to complainants' said bill; and they and each of them humbly pray to be hence dismissed with their reasonable costs in their half sustained.

FRED S. CALDWELL,

Solicitor for Respondents.

VERIFICATION.

STATE OF OKLAHOMA,

ss.

Fred S. Caldwell, being first duly sworn, on oath says: That he is the solicitor for the respondents to the foregoing demurrer in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point

of law; and on behalf of said respondents, and each of them, says, that the same is not interposed for delay.

FRED S. CALDWELL.

Subscribed and sworn to before me this 6th day of January, 1910.

L. G. DISNEY,

Clerk.

By OTIS LORTON,

Deputy.

(SEAL)

My commission expires.....

Filed January 6th, 1910.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern District, Okla.

On January 6th, 1910, in support of their application for temporary injunction, the complainants filed the following affidavits:

AFFIDAVIT.

A. Danciger, being first duly sworn, on his oath deposes and says that he is a member of the firm of Danciger Brothers, doing business under the firm style and name of Harvest King Distilling Company and Danciger Brothers; that they are now engaged in shipping goods to customers residing in the State of Oklahoma; that the above mentioned firm has in the past sent advertising matter through the United States mail to customers residing in Oklahoma, but that now, agreeable to the opinion of the Honorable Judge Ralph E. Campbell of the United States Circuit Court for the Eastern District of Oklahoma, handed down on the 22nd day of November, 1909, they no longer send advertising matter into the Eastern District of Oklahoma in violation of the law as declared by the Honorable Judge Ralph E. Campbell.

(Signed) A. DANCIGER.

Subscribed and sworn to before me this fifth day of January, 1910.

LODY C. S. MARTZ,

Notary Public in and for Jackson County, Missouri.

My commission expires November 22, 1911.

(SEAL)

Filed in open court January 6th, 1910.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern District Okla.

AFFIDAVIT.

M. O. Danciger, being first duly sworn, on his oath deposes and says that he is a member of the firm of Danciger Brothers, doing business under the firm style and name of Harvest King Distilling Company and Danciger Brothers; that they are now engaged in shipping goods to customers residing in the State of Oklahoma; that the above mentioned firm has in the past sent advertising matter though the United States mail to customers residing in Oklahoma, but that now, agreeable to the opinion of the Honorable Judge Ralph E. Campbell of the United States Circuit Court for the Eastern District of Oklahoma, handed down on the 23rd day of November, 1909, they no longer send advertising matter into the Eastern District of Oklahoma in violation of the law as declared by the Honorable Judge Ralph E. Campbell.

(Signed) M. O. DANCIGER.

Subscribed and sworn to before me this 5th day of January, 1910.

LOYD C. S. MARTZ,

Notary Public in and for Jackson County, Missouri.

My commission expires November 22nd, 1911.

(SEAL)

Filed in open court January 6th, 1910.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern District, Okla.

AFFIDAVIT.

Frank J. Quigg, of lawful age, being first duly sworn, upon his oath deposeth and says that he is advertising manager for Danciger Brothers, also doing business as the Harvest King Distilling Company, in which capacity he has charge of the preparing and mailing of all advertising matter used by Danciger Brothers; that Danciger Brothers do not now send into the Eastern District of Oklahoma advertising matter, and are endeavoring in every way to purge themselves of such methods of doing business as have been declared unlawful by the Honorable Judge Ralph E. Campbell in his opinion in the case of Dan Danciger, et al, vs. S. W. Stone, et al, handed down on November 23d, 1909.

(Signed) FRANK J. QUIGG,

Subscribed and sworn to before me this 5th day of January, 1910.

LOYD C. S. MARTZ,

Notary Public in and for Jackson County, Missouri.

My commission expires November 22nd, 1911.

(SEAL)

Filed in open court January 6th, 1910.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern District, Okla.

On February 21st, 1910, an order of temporary injunction was entered in said cause as follows:

UNITED STATES OF AMERICA,

STATE OF OKLAHOMA,

EASTERN DISTRICT—SS.

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR SAID DISTRICT.

DAN DANCIGER, ABE DANCIGER, JACK DANCIGER,
M. O. DANCIGER and JOSEPH DANCIGER, Co-
partners, trading under the firm name of The Harvest

King Distilling Company and Danciger Brothers, Complainants,

vs.

S. W. STONE, Superintendent of State Agency; R. B. RAMSEY, Sheriff of Muskogee County, Oklahoma, W. F. BLAKEMORE, Deputy Sheriff of Muskogee County, Oklahoma; CLARK COMPTON, Deputy Sheriff of Muskogee County, Oklahoma, Respondents.

TEMPORARY INJUNCTION ORDER.

The above entitled cause came on for hearing before the Court upon complainants' application for a temporary injunction and upon the respondents' demurrer to complainants' bill on Thursday, the 6th day of January, A. D. 1910, pursuant to a former order of this Court, and the agreement of the parties hereto made and announced in open court. Complainants appeared by their solicitors, Giddings & Giddings and E. H. Busick, and the respondents S. W. Stone, R. B. Ramsey, W. F. Blakemore and Clark Compton appeared by their solicitor, Fred S Caldwell.

Complainants, after introducing their bill of complaint, duly sworn to, offered and introduced in evidence sundry affidavits in support of their application for said temporary injunction and thereupon rested. The respondents offered in evidence sundry counter affidavits, which were by the Court held incompetent, irrelevant and immaterial, and were by the Court excluded; to which ruling of the Court the respondents then and there duly excepted. Thereupon the cause was argued by the solicitors for the complainants and respondents respectively, and after hearing the arguments of said counsel, and after having been further advised in the premises by the briefs submitted both on behalf of the complainants and respondents, the Court finds that respondents' demurrer to complainants' bill of complaint should be overruled, and that a temporary injunction as prayed for by complainants should issue.

It is, therefore, ordered on this 7th day of February, A. D. 1910, that the respondents, S. W. Stone, John Wisener, W. F. Blakemore and Clark Compton, and each of them, and all persons acting by, through or under them, or either of them, are hereby enjoined until further order of this Court from seizing or causing to be seized, or ordering or directing any person to seize, either directly or indirectly, any intoxicating liquors shipped by the complainants, Dan Danciger, Abe Danciger, Jack Danciger, M. O. Danciger and Joseph Danciger, co-partners, trading under the firm name of The Harvest King Distilling Company and Danciger Brothers, from points outside the State of Oklahoma to actual bona fide consignees within the Eastern District of Oklahoma while in possession of the interstate carrier and before the same have been delivered, either actually or constructively, to such bona fide consignees. Provided, however, that this order shall not apply to any liquors shipped in violation of Sec. 3449 of the Revised Statutes of the United States, or to liquors shipped in violation of Sections 238, 239 and 240, of the Act of Congress of March 4, 1909, 35 Stat. L. 1136-7, or to any such liquors which are adulterated or misbranded within the meaning of the Act of Congress of June 30th, 1906, ch. 3915, 34 Stat. L. 768, commonly known as the Pure Food and Drug Act, or to any such liquors shipped in violation of any other Act of Congress. This order to become effective upon complainants executing and filing a good and sufficient bond within fifteen days from the entry of this order in the sum of \$5,000.00, said bond to be approved by the Clerk of this Court and conditioned to indemnify the respondents herein, and each of them, against any damage that they or any of them may sustain in the premises in the event it shall be finally determined that this order should not have been issued.

It is further ordered that during the period of fifteen days hereinabove given complainants in which to execute

and file said bond, the restraining order, heretofore issued herein, shall remain in full force and effect. To all of which decree the respondents, and each of them, at the time duly excepted, and still except, on the ground that said order and decree is contrary to law in that complainants' bill does not state facts sufficient to constitute a cause of action against the defendants, or any of them, and that said order and decree is in violation of Section 720 of the Revised Statutes of the United States and in violation of the Eleventh Amendment to the Constitution of the United States and is in violation of Sections 238, 239 and 240 of the United States Penal Code, the same being Act of Congress of March 4th, 1909, 35 Stat. L. 1136-7.

And from said order and decree the respondents, and each of them, duly prayed an appeal to the United States Court of Appeals for the Eighth Circuit, which said appeal is hereby duly granted and allowed.

It is hereby further ordered that respondents, and each of them shall have until the March, 1910, Rule Day, within which to make answer to complainants' bill of complaint.

RALPH E. CAMPBELL,

Judge.

Filed February 21, 1910.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern District, Okla.

On February 23rd, 1910, there was filed in said cause the following supplemental bill:

UNITED STATES OF AMERICA,

STATE OF OKLAHOMA—SS.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF OKLAHOMA.

SUPPLEMENTARY BILL OF COMPLAINT.

DAN DANCIGER, *et al.* Plaintiffs,

vs.

S. W. STONE, *et al.* Defendants.

Come now the complainants, Danciger Brothers, and by leave of court, file this their supplementary bill of complaint herein, and complaining of S. W. Fenton, a resident of the Eastern District of Oklahoma, State Enforcement Officer, and H. F. Newblock, the duly elected and qualified sheriff of Tulsa County, in the Eastern District of Oklahoma, and of John D. Jordan, the duly qualified and elected sheriff of Washington County, in the Eastern District of Oklahoma; and of W. L. Odom the duly qualified and elected sheriff of McIntosh County in the Eastern District of Oklahoma; and of James T. Sanders, the duly qualified and elected sheriff of Cherokee county, in the Eastern District of Oklahoma; and of Hiram Stephens, the duly qualified and elected sheriff of Rogers County, in the Eastern District of Oklahoma; and of J. T. Smith, the duly qualified and elected sheriff of Pontotoc County, in the Eastern District of Oklahoma; and of the sheriff of Sulphur County, whose name is to these complainants unknown; and of W. E. Robinson, the duly qualified and elected sheriff of Okmulgee County, in the Eastern District of Oklahoma; and of Robert Sorrel, the duly elected and qualified sheriff of Ottawa County, in the Eastern District of Oklahoma; and of W. M. Cates, the duly qualified and elected sheriff of Stephens County, in the Eastern District of Oklahoma; and of George H. White, the duly qualified and elected sheriff of McClain County, in the Eastern District of Oklahoma; and of A. S. Hamilton, the duly qualified and elected sheriff of Bryan County, in the Eastern District of Oklahoma; and of H. C. King, the duly qualified and elected sheriff of Creek County, in the Eastern District of Oklahoma; and of one Ridenour, the duly qualified and elected sheriff of Craig County, in the Eastern District of Oklahoma; and of John D. Hayes, Attorney to Governor, show to the court that since the original Restraining Order was issued in this cause, and while the same was in full force and effect, the respondent, John D. Hayes, Special

Counsel to the Governor, has advised and aided the various respondents mentioned herein, and did induce, aid, advise and encourage the said respondents to wrongfully seize goods, consigned by these complainants at the various freight depots hereinafter more specifically mentioned, while said goods were still in transit and still articles of Interstate Commerce, and before delivery to the consignee.

That the said W. F. Newblock, and the said Fenton, State Enforcement Officer, did at various times, to-wit: On the 23rd day of December, 1909, and on the 10th day of January, 1910, wrongfully seize from the freight depots at Tulsa, Oklahoma, thirty-nine (39) packages of liquor consigned by these complainants while said liquors were still in the hands of the carrier, and still articles of Interstate Commerce, which goods had been shipped in the manner and form more specifically set out in complainants' original bill.

Complainants further show that John D. Jordon, sheriff of Washington County, Oklahoma, did on the 23rd day of December, and divers other dates thereafter, wrongfully seize from the freight depot of the Atchison, Topeka & Santa Fe Railroad Company and the Missouri, Kansas & Texas Railway Company, at Bartlesville, quantities of intoxicating liquors, the exact amount whereof is to complainants unknown, which said liquors had been shipped by complainants from Kansas City, Missouri, in the manner and form more particularly set out in complainants' original bill, and which said liquors had not been delivered to the consignees, and were still in the possession of the carrier, and still articles of Interstate Commerce.

Complainants further show that the said W. L. Odom, sheriff of McIntosh County, Oklahoma, and S. W. Fenton, State Enforcement Officer, did on the 11th day of December, 1909, wrongfully seize from the freight depot of the Missouri, Kansas & Texas Railway Company, at Eufaula, Oklahoma, twenty-nine (29) packages of liquor consigned

by these complainants, and shipped in the manner more particularly set out in complainants original bill, while said goods were still in the hands of the carrier, before the delivery thereof to the consignees, and while said goods were still articles of Interstate Commerce.

Complainants further show that the said Jas. T. Sanders, sheriff of Cherokee County, Oklahoma, and W. S. Fenton, State Enforcement Officer, did on the 23rd day of December, 1909, wrongfully seize from the St. Louis and San Francisco Ry. depot at Tahlequah, Oklahoma, quantities of intoxicating liquors, the exact amount of which is unknown, which said liquors had been shipped by complainants from Kansas City, Missouri, in the manner and form more specifically set out in complainant's original bill, and which said liquors had not been delivered to the consignees, and were still in the possession of the carrier, and still articles of Interstate Commerce.

Complainants further show that the sheriff of Rogers County, and S. W. Fenton, State Enforcement Officer, did on the 31st day of December, wrongfully seize from the Santa Fe depots at Claremore and Collinsville, Oklahoma, thirty-two (32) packages of liquor, which said liquors had been shipped by complainants from Kansas City, Missouri, in the manner and form more particularly set out in complainants original bill, and which said liquors had not been delivered to the consignees, and were still in the possession of the carrier, and still articles of Interstate Commerce.

Complainants further show that J. T. Smith, sheriff of Pontotoc County, Oklahoma, and S. W. Fenton, State Enforcement Officer, wrongfully seized seven (7) cases of liquors from the Frisco depot at Ada, Oklahoma, on the 18th day of January, 1910, and forty-eight (48) cases from the M., O. & G. depot at Allen, Oklahoma, on the 15th day of January, 1910, and six (6) cases from the Oklahoma Central R. R. depot on the 14th day of January, which said

liquor had been shipped by complainants from Kansas City, Missouri, in the manner and form more particularly set out in complainants' original bill, and which said liquor had not been delivered to the consignees, and was still in the possession of the carrier, and still articles of Interstate Commerce.

Complainants further show that the sheriff of Murray County, and S. W. Fenton, State Enforcement Attorney, wrongfully seized five (5) cases of liquor from the Santa Fe depot at Sulphur, Oklahoma, on December 3rd, 1909, which said liquor had been shipped by complainants from Kansas City, Missouri, in the manner and form more particularly set out in complainants' bill originally, and which said liquor had not been delivered to the consignees, and was still in the possession of the carrier, and still articles of Interstate Commerce.

Complainants further show that W. E. Robinson, sheriff of Okmulgee County, and S. W. Fenton, State Enforcement Officer, did wrongfully seize four (4) cases of liquor from the Frisco depot on the 10th day of January, 1910, which said liquor said complainants had shipped from Kansas City, Missouri, in the manner and form more particularly set out in complainants' original bill, and which said liquor had not been delivered to the consignees, and was still in the possession of the carrier, and still articles of Interstate Commerce.

Complainants further show that W. E. Robinson, sheriff of Okmulgee County, and S. W. Fenton, State Enforcement Officer, did wrongfully seize two (2) cases of liquor, on December 23rd, 1909, at the Frisco depot at Beggs, Oklahoma, which said liquor had been shipped by complainants from Kansas City, Missouri, in the manner and form more particularly set out in complainants' original bill, and which said liquor had not been delivered to the consignees, and was still in the possession of the carrier, and still an article of Interstate Commerce.

Complainants further show that Robert Sorrel, sheriff of Ottawa County, and S. W. Fenton, State Enforcement Officer, did on the 24th day of December, 1909, wrongfully seize fifteen (15) packages of liquor from the Frisco depot at Miami, Oklahoma, which said liquor had been shipped by complainants from Kansas City, Missouri, in the manner and form more particularly set out in complainants' original bill, and which said liquor had not been delivered to the consignees, and was still in the possession of the carrier, and still articles of Interstate Commerce.

Complainants further show that W. L. Cates, sheriff of Stephens County, and S. W. Fenton, State Enforcement Officer, did on the 23rd day of December, 1909, wrongfully seize eleven (11) packages of liquor from the Rock Island Railway at Duncan, Oklahoma, and five (5) cases of liquor from the Rock Island depot on the 30th day of December, 1909, at Marlow, Oklahoma, which said liquors had been shipped by complainants from Kansas City Missouri, in the manner and form more particularly set out in complainants' original bill, and which said liquors had not been delivered to the consignees, and were still in the possession of the carrier, and still articles of Interstate Commerce.

Complainants further show that A. S. Hamilton, sheriff of Bryan County, and S. W. Fenton, State Enforcement Attorney, did on the 11th day of October, 1909, wrongfully seize certain packages of liquor, the exact amount of which is unknown, which said liquors had been shipped by complainants from Kansas City, Missouri, in the manner and form more particularly set out in complainants' original bill, and which said liquors had not been delivered to the consignees, and were still in the possession of the carrier, and still articles of Interstate Commerce.

Complainants further show that H. C. King, sheriff of Creek County, Oklahoma, and S. W. Fenton, State Enforcement Officer, did on the 23rd day of December, 1909, wrong-

fully seized three (3) cases of liquor at Mounds, Oklahoma, at the Frisco depot, and a large number, the exact amount unknown to these complainants, from the Frisco depot at Sapulpa, Oklahoma, which said liquors had been shipped by complainants from Kansas City, Missouri, in the manner and form more particularly set out in complainants original bill, and which said liquors had not been delivered to the consignees, and were still in the possession of the carrier, and still articles of Interstate Commerce.

And the complainants further complaining of the said Ridenour, sheriff of Craig county, show that at divers times the said Ridenour has wrongfully seized from the depot of the St. Louis and San Francisco Railroad Company, large quantities of liquor, the exact amount of which is at present to the complainants unknown, notwithstanding the fact that said Ridenour had actual knowledge of the existence of an injunction issued by this honorable court, the spirit of which was the protection of goods consigned by these complainants while still in the hands of the Railroad Company, and while still articles of Interstate Commerce, and after having been actually enjoined by this court from seizing goods in the possession of the M., K. & T. Ry. Co.

Complainants further complaining of the said John Hayes, show this court that the said John Hayes has actual control and supervision over, and does direct the seizures complained of herein; that he has the power to direct and does direct in some instances, that said goods so wrongfully seized, be returned to the carriers from whose possession said goods have been seized.

Complainants further show that the said S. W. Fenton, has instigated and directs the said seizures herein complained of, and is active in the wrongs and trespasses herein set out.

Wherefore, complainants pray that the said Hayes, Fenton, Newblock, Odom, Sanders, Stephens, Smith, Robinson,

Sorrel, Cates, White, Hamilton, King, Ridenour and the sheriff of Sulphur County, may be made parties to this suit and that the temporary injunction now in force, be extended to and include said parties, and that subpoenas may issue to said parties, requiring them to appear at this court upon the final hearing of this cause, and that then this injunction be made perpetual as to said additional defendants, as well as to all other defendants in this cause.

And complainants further pray that the said Ridenour, sheriff of Craig County, Oklahoma, be ordered to restore to the carrier the goods seized by him as set out in this complaint, and that the said John Hayes, be ordered to command the return of goods seized as mentioned in this complaint, and for such other and further relief as to this court seems just and equitable.

GIDDINGS & GIDDINGS *and*

E. H. BUSICK,

Attorneys.

E. H. Busick, attorney for complainants, being first duly sworn on his oath states that he has read the foregoing supplementary bill and that the matters alleged therein are true so he is informed and verily believes.

E. H. BUSICK.

Subscribed and sworn to before me this 25th day of February, 1910.

L. G. DISNEY,

Clerk.

By A. S. FARNHAM,

D. C.

(SEAL)

Filed February 23rd, 1910.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern District, Okla.

On February 25th, 1910, the following order was entered extending the restraining order heretofore issued:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF OKLAHOMA.

RESTRAINING ORDER.

DAN DANCIGER, *et al*, *Plaintiffs*,

vs.

S. W. STONE, *et al*, *Defendants*.

On this day came on to be heard the supplementary Bill of Complaint filed by the complainants herein and it appearing from the allegations therein that the said John M. Hayes, Attorney for the Governor; S. W. Fenton, State Enforcement Attorney; and the said Newblock, John D. Jordan, W. L. Odom, James T. Sanders, Hiram Stephens, J. T. Smith, W. E. Robinson, Robert Sorrell, W. M. Cates, George H. White, A. S. Hamilton, H. C. King, Ridenour and the sheriff of Sulphur County, whose name is unknown to the complainants, are proper parties to this suit, it is hereby ordered that the complainants be permitted to make said respondents parties to this suit, and it further appearing from the allegations of the Bill of Complaint herein that the said defendants have seized intoxicating liquors shipped by the complainants herein, since the institution of this suit, and the granting of a temporary restraining order herein, which said shipments were made from the State of Missouri into the State of Oklahoma, while the same were in the hands of the common carrier in the Eastern District of Oklahoma, while the same were interstate commerce shipments, and before delivery to the consignees and surrender of the bill of lading.

It is, therefore, ordered that a restraining order be extended to each of said respondents, and that said Restraining Order be granted as to each of said defendants.

Therefore, you, John M. Hayes, S. W. Fenton, H. F. Newblock, John D. Jordan, W. L. Odom, James T. Sanders,

Hiram Stephens, J. T. Smith, W. E. Robinson, Robert Sorrell, W. M. Cates, George H. White, A. S. Hamilton, H. C. King, Ridenour and the sheriff of Sulphur County, whose name is unknown to complainants, and all persons acting under you or them, are hereby enjoined and restrained until further order of this court, from seizing any intoxicating liquors shipped by the complainants herein as set out in the pleadings herein, and from disposing of any intoxicating liquors so seized as set out herein, and the hearing for the application for the temporary injunction against you, and each of you, is hereby set for Saturday, March 5th, 1910, at Muskogee, in said Eastern District.

RALPH E. CAMPBELL,

Judge.

On March 5th, 1910, the hearing on temporary injunction was passed to March 19th and on the latter date, counsel for defendants not appearing, the hearing was passed indefinitely and the restraining orders continued in force.

On December 17th, 1910, there was filed in the United States Circuit Court the following bill:

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR THE EASTERN DISTRICT OF THE STATE OF OKLAHOMA.

No.

BILL IN EQUITY FOR INJUNCTION.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

HENRY E. RIDENHOUR and HOLLAND CLARKE,
Defendants.

To the Honorable Judges of the Circuit Court of the United States Within and for the Eastern District of the State of Oklahoma:

The Missouri, Kansas & Texas Railway Company brings

this its bill of complaint against Henry E. Ridenhour and Holland Clarke, and humbly complaining says:

That your orator, Missouri, Kansas & Texas Railway Company is a corporation created, organized and existing under and by virtue of the laws of the State of Kansas, and is a citizen and resident of said State, and that the defendants are citizens and residents of the Eastern District of the State of Oklahoma.

Further complaining, your orator states that it is now and for many years past has been a common carrier of goods for hire, owning and operating lines of railroad in the States of Missouri, Kansas and Oklahoma, and engaged in the transportation of all classes of goods that may be lawfully transported from one state into another as well as from points within the State of Oklahoma to other points within the State of Oklahoma, and to points without the State of Oklahoma, and as such common carrier your orator has built up an extensive and valuable business, and that as such common carrier of goods for hire it becomes your orator's duty to accept for transportation from points without the State of Oklahoma to points within the State of Oklahoma, and from points within the State of Oklahoma to points without the State of Oklahoma, intoxicating liquors of various characters, including amongst others, whiskey, beer, wine and brandy, and that your orator cannot lawfully refuse because of its being such common carrier to receive at points without the state of Oklahoma, for shipment to points within the State of Oklahoma, intoxicating liquors, nor can it lawfully refuse to receive such shipments at points within the State of Oklahoma, for shipment to points without the State of Oklahoma, and cannot lawfully refuse to transport such interstate shipments of liquor, and it is so receiving for shipment and is so transporting in the ordinary course of its business as a common carrier such interstate shipments of liquor from points without

the State of Oklahoma to points within the State of Oklahoma, and from points within the State of Oklahoma, to points without the State of Oklahoma; that the volume of such interstate shipments of liquor so tendered to your orator for shipment in the ordinary course of its business as a common carrier is of a large volume, and the value of such shipments within the six months last past aggregate many thousands of dollars, and that the revenues to your orator upon such shipments have within the six months last past aggregated more than Two Thousand Dollars.

Further complaining, your orator states that when such interstate shipments of liquor are tendered to it for shipment it is required by law to issue its bills of lading therefor, whereby it binds itself to transport said goods from such respective points without this State to such respective points within this State and from such respective points within this State to such respective points without this State, and to deliver such respective shipments of liquor to the respective consignees at the respective points of destination named in said bills of lading, and that if your orator fails to deliver said goods in accordance with said bills of lading, your orator becomes liable in damages to the various consignees for the full value of said goods.

Further complaining, your orator states that owing to the large amount of such interstate shipments of liquor that will hereafter be shipped over your orator's line the value of its business in transporting said goods is worth to your orator in the immediate future far in excess of the sum of Two Thousand Dollars.

Further complaining, your orator states that the above named defendants and each of them are interfering with the interstate business of your orator in the handling and transporting and delivery of such interstate shipments of liquor, claiming to act under the authority of an Act of the Legislature of the State of Oklahoma, entitled:

“An Act to establish a State Agency and Local Agencies for the sale of Intoxicating Liquors for certain purposes; and providing for referring the same to the people; prohibiting the manufacture, sale, barter, giving away, or otherwise furnishing of Intoxicating Liquors, except as herein provided; providing for the appointment of an attorney, and for the enforcement of the provisions of this Act: Making an appropriation and declaring an emergency.”

approved March 24, 1908, and that on the 30th day of November, 1909, the defendants, Henry E. Ridenhour and Holland Clarke unlawfully and wrongfully entered the depot building of your orator at its station at Vinita, in the said Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire, and upon which the freight charges had not been paid and bills of lading had not been surrendered, and no delivery made by your orator:

Five cases whiskey from B. F. Flersheim & Co., Kansas City, Missouri, to shippers order, notify Otis Tittle, Vinita, Oklahoma,

Five cases whiskey from B. F. Flersheim & Co., Kansas City, Missouri, to shippers order, notify Otis Tittle, Vinita, Oklahoma,

Five cases whiskey from B. F. Flersheim & Co., Kansas City, Missouri, to shippers order, notify Otis Tittle, Vinita, Oklahoma,

One drum whiskey from Danciger Bros., Kansas City, Missouri, to shippers order, notify Roy Ledman, Vinita, Oklahoma,

One drum whiskey from Danciger Bros., Kansas City, Missouri, to shippers order, notify Roy Ledman, Vinita, Oklahoma,

One drum whiskey from Danciger Bros., Kansas

City, Missouri, to shippers order, notify Roy Ledman, Vinita, Oklahoma.

Further complaining, your orator states that the above shipments so wrongfully seized by the said defendants are now wrongfully and unlawfully held by defendant Henry E. Ridenhour at Vinita, Oklahoma, and that unless prevented by order of this Court from so doing the said defendants will at an early day cause a pretended order of forfeiture of said liquor to be made as against your orator and will permanently withhold same from your orator, claiming to do so by virtue of the State Statute of the State of Oklahoma, hereinabove referred to.

Further complaining, your orator states that the said defendants decline to deliver back to your orator the above specified interstate shipments of liquor so as aforesaid wrongfully and unlawfully seized from your orator at its depot at Vinita, Oklahoma, and that if said interstate shipments of liquor so unlawfully and wrongfully seized from your orator as aforesaid are not promptly delivered back into the possession of your orator that a number of suits will be instituted against your orator by persons having or claiming an interest in said shipments to the great expense and annoyance of your orator.

Further complaining, your orator states that by virtue of its business as a common carrier of goods for hire, it will be compelled to receive large quantities of interstate shipments of liquor consigned from points outside the State of Oklahoma to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, the value of which shipments will in the course of one year's time exceed the sum of many thousands of dollars, and the earnings of your orator in transporting same will be much more than the sum of Two Thousand Dollars, exclusive of interest and costs, and that the defendants herein are threatening to continue this wrongful and unlawful interference with the interstate business of

your orator in the transportation and delivery of these interstate shipments of goods, and which interference on their part will involve your orator in innumerable law suits at various points with various parties who may offer to your orator at points outside of the State of Oklahoma shipments of liquor consigned to points within the Eastern District of the State of Oklahoma, and at points within the Eastern District of the State of Oklahoma, shipments of liquor consigned to points without the State of Oklahoma, and to all of which persons your orator would be required to issue its bill of lading covering interstate shipments of goods so offered to it, and for whom it will be under the law required to transport said liquor in accordance with said bills of lading.

Further complaining, your orator states that under the Constitution and laws of the United States it has lawfully carried over its line from points without the State of Oklahoma, consigned to points within the Eastern District of the State of Oklahoma, the shipments hereinabove specified which have so as aforesaid been wrongfully and unlawfully seized from your orator, and that your orator in accordance with its lawful duty must engage in the future in the transportation of these intoxicating liquors from points without the State of Oklahoma to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma to points without the State of Oklahoma, and there deliver said consignments to the consignee named in the bills of lading, and that the defendants by their course are seeking to deny the right of your orator under the Constitution and laws of the United States so to do, and to deprive your orator of the right so to do as guaranteed to it by the Constitution and laws of the United States, and that your orator is entitled to be protected in its said right by the order of this Court.

Further complaining, your orator states that it believes and charges that the defendants are not financially able

to respond in damages for the large sums of money in which your orator will be damaged by reason of the continued wrongs and injuries heretofore practiced and hereafter to be practiced by said defendants on your orator as hereinabove alleged.

To the end, therefore, that your orator may have the relief to which it is justly entitled in the premises, the matters herein being cognizable and relievable only in a Court of equity, your orator prays the Court to grant due process for subpoena directed to the said defendants, and each of them, requiring and commanding them to appear herein and answer, but not under oath, answer under oath being expressly waived to the several allegations in this your orator's bill contained.

Your orator further prays that an order issue against said defendants and each of them, returnable upon a particular day and hour before this Court to show cause why they should not be restrained by temporary injunction of this Court from further interfering with or seizing or receiving or aiding, abetting, assisting, advising or encouraging any other person or persons to interfere with or seize any shipment of whiskey, beer, wine, brandy or other liquors that may be in the possession of your orator in its cars or depots within the Eastern District of the State of Oklahoma, consigned from points without the State of Oklahoma to points within the Eastern District of the State of Oklahoma, or from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and directed to at once deliver to the agent of your orator at its depot at Vinita, Oklahoma, the respective shipments of liquor so as aforesaid wrongfully and unlawfully seized and taken therefrom.

Your orator further prays that in the mean time and until said order to show cause may be heard and determined that restraining order issue restraining said defendants and each of them and their agents and employes from entering the cars and depot or other premises of your orator, and

from taking therefrom intoxicating liquors shipped from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that said defendants and each of them, their agents and employes be restrained from in anywise interfering with your orator in its handling and delivery of such interstate shipments of intoxicating liquors, or inciting, aiding, abetting, advising or encouraging other persons so to do, and that the said defendants and each of them be further restrained from taking any steps looking to the forfeiture of any of the liquors mentioned in this your orator's bill as having heretofore been unlawfully seized and taken from your orator's depot at Vinita, Oklahoma, and that the defendants now having charge or possession of any or all of said liquors shall retain same in their possession without change whatever as to the status of said liquors until said order to show cause may be heard and determined.

Your orator further prays that upon the hearing of this suit and adjudication thereof, the said defendants and each of them be perpetually enjoined from interfering with or seizing or receiving or aiding, abetting, assisting, advising or encouraging any other person or persons to interfere with or seize any shipment of whiskey, beer, wine, brandy or other liquors that may be in the possession of your orator in its cars or depots within the Eastern District of the State of Oklahoma, consigned from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, or from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that said defendants be directed to at once deliver to the agent of your orator at its depot at Vinita, Oklahoma, the respective shipments of liquor so as aforesaid wrongfully and unlawfully seized and taken

therefrom; and that said defendants and each of them be perpetually enjoined from entering the cars or depots or other premises of your orator in the Eastern District of the State of Oklahoma, and from taking therefrom intoxicating liquors shipped from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that defendants and each of them be perpetually enjoined from taking any steps looking to the forfeiture of any of the liquors mentioned in this your orator's bill as having heretofore been unlawfully seized and taken from your orator's depot at Vinita, Oklahoma.

And your orator further prays that your orator may have such other and further relief preliminary and final as to the Court may seem meet and proper, and which equity and good conscience may require, and for its costs.

CLIFFORD L. JACKSON,

M. D. GREEN,

Solicitors for Complainant.

UNITED STATES OF AMERICA,

ss.

EASTERN DISTRICT OF OKLAHOMA.

Harvey A. Farthing, being first duly sworn upon oath states that he is the regularly appointed and acting station agent for the complainant at its station at Vinita, Oklahoma; that he has read the above and foregoing bill and knows the contents thereof and is familiar with the matters and things therein contained, and that the allegations and averments therein contained are true.

HARVEY A. FARTHING.

Subscribed and sworn to before me this 16th day of December, A. D. 1909.

ROSE HAMBLÉN,

Notary Public.

My commission Expires April 8, 1913.

SEAL.

Filed Dec. 17, 1909.

L. G. DISNEY,
Clerk U. S. Circuit Court, Eastern Dist. Okla.

On December 22d, 1910, an order of temporary injunction was entered in said cause as follows:

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR THE EASTERN DISTRICT OF THE STATE OF OKLAHOMA,
No. 1235.

TEMPORARY INJUNCTION.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

HENRY E. RIDENHOUR and HOLLAND CLARKE,
Defendants.

Now on this 22nd day of December, 1909, this cause coming on to be heard upon the application of the complainant, for temporary injunction herein, and all parties being present and the Court having heard counsel for the parties and having seen all the papers and pleadings on file herein and being well and sufficiently advised in the premises and it appearing to the Court that temporary injunction should issue against the defendants herein,

It is therefore ordered that the defendants, Henry E. Ridenhour and Holland Clarke, be and they are hereby enjoined and restrained from interfering with or seizing, or receiving or aiding, abetting, advising or encouraging any other person or persons to interfere with or seize any shipment of whiskey, beer, wine, brandy or other liquors that may be in the possession of the complainant, the Missouri, Kansas & Texas Railway Company within the Eastern District of the State of Oklahoma, consigned from various points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, or from points within the Eastern District of the State of Oklahoma, to

7
9

points without the State of Oklahoma, and that said defendants and each of them be, and they are hereby enjoined and restrained from entering the cars and depots or other premises of the complainant, Missouri, Kansas & Texas Railway Company in the Eastern District of the State of Oklahoma, and from taking therefrom intoxicating liquors shipped from points without the State of Oklahoma to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma to points without the State of Oklahoma, and that the said defendants and each of them be, and they are hereby enjoined from taking any steps looking to the forfeiture of any of the liquors mentioned in the complainant's bill of complaint herein as having been heretofore unlawfully seized and taken from complainant's depot at Vinita, Oklahoma.

And it is further ordered that the said defendants forthwith deliver over to the complainant or its agent at its depot at Vinita, Oklahoma, the articles specified in the bill of complaint on file in this case as having been seized and taken away from the depot of the complainant at Vinita, Oklahoma, on the 30th day of November, 1909, and described in said bill of complaint as follows:

Five cases whiskey from B. F. Flersheim & Co., Kansas City, Missouri, to shippers order, notify Otis Tittle, Vinita, Oklahoma,

Five cases whiskey from B. F. Flersheim & Co., Kansas City, Missouri, to shippers order, notify Otis Tittle, Vinita, Oklahoma,

Five cases whiskey from B. F. Flersheim & Co., Kansas City, Missouri, to shippers order, notify Otis Tittle, Vinita, Oklahoma,

One drum whiskey from Danciger Bros., Kansas City, Missouri, to shippers order, notify Roy Ledman, Vinita, Oklahoma,

One drum whiskey from Danciger Bros., Kansas City,

Missouri, to shippers order, notify Roy Ledman,
Vinita, Oklahoma,

One drum whiskey from Danciger Bros., Kansas City,
Missouri, to shippers order, notify Roy Ledman,
Vinita, Oklahoma,

This order to be in full force and effect until further
order of this court upon the filing of a bond by the com-
plainant in the sum of \$1,500.00 to be approved by the
Clerk of this Court.

RALPH E. CAMPBELL,

*Judge, United States Circuit Court for the Eastern District
of Oklahoma.*

O. K. as to form,

W. J. CRUMP, *Co. Atty.*

Filed December 22, 1909.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern District Oklahoma.

On January 6th, 1910, the respondents filed the follow-
ing demurrer in said cause:

UNITED STATES OF AMERICA,

STATE OF OKLAHOMA,

EASTERN DISTRICT,

ss.

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR SAID DISTRICT.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

HENRY E. RIDENHOUR and HOLLAND CLARKE,
Defendants.

No.

DEMURRER FOR LACK of JURISDICTION and EQUITY

These respondents, Henry E. Ridenhour and Holland
Clarke, by protestation, not confessing or acknowledging
all, or any, of the matters or things in the said bill of com-

plaint contained, to be true, in such manner as the same are therein set forth and alleged, demur to the said bill; and for cause of demurrer show:

I.

That it appears by complainant's own showing by the said bill that it is not entitled to the relief prayed by said bill against these respondents, or any of them.

II.

That it appears from the complainant's said bill of complaint that this Court has no jurisdiction to hear and determine this action, and that the relief prayed for is sought in direct violation of the Seventh and Eleventh Amendment to the Constitution of the United States, and in direct violation of Section 720 of the Revised Statutes of the United States.

III.

That complainant's said bill of complaint is wholly without equity.

WHEREFORE, and for divers other good causes of demurrer in said bill, these respondents demur thereto, and they and each of them pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to complainant's said bill; and they and each of them humbly pray to be hence dismissed with their reasonable costs in their half sustained.

FRED. S. CALDWELL,
Solicitor for Respondents.

VERIFICATION.

STATE OF OKLAHOMA,

ss.

COUNTY OF.....

Fred S. Caldwell, being first duly sworn, on oath says:
That he is the solicitor for the respondents to the foregoing

demurrer in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point of law; and on behalf of said respondents, and each of them says; that the same is not interposed for delay.

FRED. S. CALDWELL,

Subscribed and sworn to before me this 6th day of January, 1910.

L. G. DISNEY, *Clerk.*

By OTIS LORTON, *Deputy.*

My Commission Expires-----
SEAL.

Filed January 6, 1910.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern Dist. Okla.

On December 17th, 1909, there was filed in the U. S. Circuit Court the following bill:

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR THE EASTERN DISTRICT OF THE STATE OF OKLAHOMA.

No.....

BILL IN EQUITY FOR INJUNCTION.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

ROBERT B. WATSON, W. F. BLAKEMORE and CLARK
W. COMPTON, *Defendants.*

*To the Honorable Judges of the Circuit Court of the United
States Within and for the Eastern District of the State of
Oklahoma:*

The Missouri, Kansas & Texas Railway Company brings
this its bill of complaint against Robert B. Watson, W. F.
Blakemore, and Clark W. Compton, and humbly complain-
ing says:

That your orator, Missouri, Kansas & Texas Railway
Company is a corporation created, organized and existing

under and by virtue of the laws of the State of Kansas, and is a citizen and resident of said State, and that the defendants are citizens and residents of the Eastern District of the State of Oklahoma.

Further complaining, your orator states that it is now and for many years past has been a common carrier of goods for hire, owning and operating lines of railroad in the States of Missouri, Kansas and Oklahoma, and engaged in the transportation of all classes of goods that may be lawfully transported from one State into another as well as from points within the State of Oklahoma to other points within the State of Oklahoma, and to points without the State of Oklahoma, and as such common carrier your orator has built up an extensive and valuable business, and that as such common carrier of goods for hire it becomes your orator's duty to accept for transportation from points without the State of Oklahoma to points within the State of Oklahoma, and from points within the State of Oklahoma to points without the State of Oklahoma, intoxicating liquors of various characters, including amongst others, whiskey, beer, wine and brandy, and that your orator cannot lawfully refuse because of its being such common carrier to receive at points without the State of Oklahoma, for shipment to points within the State of Oklahoma, intoxicating liquors, nor can it lawfully refuse to receive such shipments at points within the State of Oklahoma, for shipment to points without the State of Oklahoma, and cannot lawfully refuse to transport such interstate shipments of liquor, and it is so receiving for shipment and is so transporting in the ordinary course of its business as a common carrier such interstate shipments of liquor from points without the State of Oklahoma to points within the State of Oklahoma, and from points within the State of Oklahoma, to points without the State of Oklahoma; that the volume of such interstate shipments of liquor so tendered to your orator for shipment in the ordinary course of its business as a com-

mon carrier is of a large volume, and the value of such shipments within the six months last past aggregate many thousands of dollars, and that the revenues to your orator upon such shipments have within the six months last past aggregated more than Two Thousand Dollars.

Further complaining, your orator states that when such interstate shipments of liquor are tendered to it for shipment it is required by law to issue its bills of lading therefor, whereby it binds itself to transport said goods from such respective points without this State to such respective points within this State and from such respective points within this State to such respective points without this State, and to deliver such respective shipments of liquor to the respective consignees at the respective points of destination named in said bills of lading, and that if your orator fails to so deliver said goods in accordance with said bills of lading, your orator becomes liable in damages to the various consignees for the full value of said goods.

Further complaining, your orator states that owing to the large amount of such interstate shipments of liquor that will hereafter be shipped over your orator's line the value of its business in transporting said goods is worth to your orator in the immediate future far in excess of the sum of Two Thousand Dollars.

Further complaining, your orator states that the above named defendants and each of them are interfering with the interstate business of your orator in the handling and transporting and delivery of such interstate shipments of liquor, claiming to act under the authority of an Act of the Legislature of the State of Oklahoma, entitled:

"An Act to establish a State Agency and Local Agencies for the sale of Intoxicating Liquors for certain purposes; and providing for referring the same to the people; prohibiting the manufacture, sale, barter, giving away, or otherwise furnishing of Intoxicating Liquors, except as herein provided; providing for the appoint-

ment of an attorney, and for the enforcement of the provisions of this Act: Making an appropriation and declaring an emergency.”

Approved March 24, 1908, and that on the 7th day of December, 1909, the defendants, W. F. Blakemore, and Clark W. Compton, unlawfully and wrongfully entered the depot building of your orator at its station at Muskogee, in the said Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire, and upon which the freight charges had not been paid and bills of lading had not been surrendered, and no delivery made by your orator:

One box whiskey consigned from Harvest & King D. Co., Kansas City, Missouri, to shippers order, notify Clarence A. Hill, Muskogee, Oklahoma,

One box whiskey consigned from Harvest & King D. Co., Kansas City, Missouri, to Geo. K. Davidson, Muskogee, Oklahoma,

One case beer consigned from A. V. Co., Kansas City, Missouri, to F. G. Manson, Muskogee, Oklahoma,

Five cases whiskey consigned from O. F. Haley, Gainesville, Texas, to E. M. McFarland, Muskogee, Oklahoma.

One case whiskey consigned from Levi Shier Dis. Co., Kansas City, Missouri, to shippers order, notify James P. Wallace, Muskogee, Oklahoma,

One barrel beer consigned from J. B., Kansas City, Missouri, to A. J. Gardenhier, Muskogee, Oklahoma,

One barrel beer consigned from J. B., Kansas City, Missouri, to Jno. L. Winener, Muskogee, Oklahoma,

One case beer consigned from Royal Bwg., Co., Kansas City, Missouri, to shippers order, notify M. Ellis, Muskogee, Oklahoma.

One box liquor consigned from Maryland Wine &

L. Co., Kansas City, Missouri, to shippers order, notify Henry Williams, Muskogee, Oklahoma.

Two boxes liquor consigned from Maryland Wine & L. Co., Kansas City, Missouri, to shippers order, notify Mike Adamson, Muskogee, Oklahoma,

Three boxes liquor consigned from Maryland Wine & L. Co., Kansas City, Missouri, to shippers order, notify C. Jones, Muskogee, Oklahoma,

One cask beer consigned from Reder Mfg. Co., Joplin, Missouri, to R. G. Emmert, Muskogee, Oklahoma,

One cask beer consigned from Reder Mfg. Co., Joplin, Missouri, to F. C. Sananire, Muskogee, Oklahoma,

Two cases liquor consigned from Reder Mfg. Co., Joplin, Missouri, to shippers order, notify Jack Gordon, Muskogee, Oklahoma,

One drum whiskey in glass consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify Henry Hawkins, Muskogee, Oklahoma,

Two boxes whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify J. Gordon, Muskogee, Oklahoma,

One box whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify R. Butler, Muskogee, Oklahoma,

One box whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify R. Butler, Muskogee, Oklahoma,

One drum whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify Middleton & Davis, Muskogee, Oklahoma,

One box whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify J. A. Hardick, Muskogee, Oklahoma,

One drum whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify Middleton & Davis, Muskogee, Oklahoma.

and your orator states that on the same day the said W. F. Blakemore and Clark W. Compton unlawfully and wrongfully entered the depot building of your orator at its station at Muskogee in the said Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire, and upon which its bill of lading was still outstanding and no delivery made thereunder:

16 barrels beer consigned from Tom Owens, Muskogee, Oklahoma, to Redell Mfg. & Supply Co., at Joplin, Missouri,

Five barrels whiskey consigned from Lee Spnrlock, Muskogee, Oklahoma, to Casey Swasy Co., Ft. Worth, Texas.

Further complaining your orator states that on the same day the said W. F. Blakemore and Clark W. Compton unlawfully and wrongfully entered the depot building of your orator at its station at Muskogee, in the said Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire, and upon which the freight charges had been paid and bills of lading surrendered, but which had not been taken from your orator's possession by consignees:

Jno. Williams	10 cs. whiskey,
Jack Gordon	1 cs. whiskey,
Will Smith	7 cs. whiskey,
J. H. Davis	1 cs whiskey,
J. W. Winford	3 cs. whiskey,
B. McCurtain	3 casks beer,
Eagles Club	3 kegs beer,
Eagles Club	3 casks beer,
Henry Baker	1 cask beer,
W. Butz	1 cask beer,

Geo. Anderson3 cases whiskey,
J. W. Strawhorn1 case whiskey,
J. E. Ewing1 case whiskey,
J. T. Owens2 cs. whiskey,
Red Cross Drug Co.....2 cases wine,
No marks2 casks beer,

Further complaining, your orator states that the above shipments so wrongfully seized by the said defendants are now wrongfully and unlawfully held by defendants W. F. Blakemore and Clark W. Compton at Muskogee, Oklahoma, and that unless prevented by order of this Court from so doing the said defendants will at an early day cause a pretended order of forfeiture of said liquor to be made as against your orator and will permanently withhold same from your orator, claiming to do so by virtue of the State Statute of the State of Oklahoma, hereinabove referred to.

Further complaining, your orator states that the said defendants decline to deliver back to your orator the above specified interstate shipments of liquor so as aforesaid wrongfully and unlawfully seized from your orator at its depot at Muskogee, Oklahoma, and that if said interstate shipments of liquor so unlawfully and wrongfully seized from your orator as aforesaid are not promptly delivered back into the possession of your orator that a large number of suits will be instituted against your orator by persons having or claiming an interest in said shipments to the great expense and annoyance of your orator.

Further complaining, your orator states that by virtue of its business as a common carrier of goods for hire, it will be compelled to receive large quantities of interstate shipments of liquor consigned from points outside the State of Oklahoma to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, the value of which shipments will in the course of one year's time exceed the sum of many thousands of dollars, and the earnings of your orator in trans-

porting same will be much more than the sum of Two Thousand Dollars, exclusive of interest and costs, and that the defendants herein are threatening to continue this wrongful and unlawful interference with the interstate business of your orator in the transportation and delivery of these interstate shipments of goods, and which interference on their part will involve your orator in innumerable law suits at various points with various parties who may offer to your orator at points outside of the State of Oklahoma shipments of liquor consigned to points within the Eastern District of the State of Oklahoma, and at points within the Eastern District of the State of Oklahoma, shipments of liquor consigned to points without the State of Oklahoma, and to all of which persons your orator would be required to issue its bill of lading covering interstate shipments of goods so offered to it, and for whom it will be under the law required to transport said liquor in accordance with said bills of lading.

Further complaining, your orator states that under the Constitution and laws of the United States it has lawfully carried over its line from points without the State of Oklahoma, consigned to points within the Eastern District of the State of Oklahoma, the shipments hereinabove specified which have so as aforesaid been wrongfully and unlawfully seized from your orator, and that your orator in accordance with its lawful duty must engage in the future in the transportation of these intoxicating liquors from points without the State of Oklahoma to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma to points without the State of Oklahoma, and there deliver said consignments to the consignee named in the bills of lading, and that the defendants by their course are seeking to deny the right of your orator under the Constitution and laws of the United States so to do, and to deprive your orator of the right so to do as guaranteed to it by the Constitution and laws of

the United States, and that your orator is entitled to be protected in its said right by the order of this Court.

Further complaining, your orator states that it believes and charges that the defendants are not financially able to respond in damages for the large sums of money in which your orator will be damaged by reason of the continued wrongs and injuries heretofore practiced and hereafter to be practiced by said defendants on your orator as hereinabove alleged.

To the end, therefore, that your orator may have the relief to which it is justly entitled in the premises, the matters herein being cognizable and relievable only in a Court of equity, your orator prays the Court to grant due process for subpoena directed to the said defendants, and each of them, requiring and commanding them to appear herein and answer, but not under oath, answer under oath being expressly waived to the several allegations in this your orator's bill contained.

Your orator farther prays that an order issue against said defendants and each of them, returnable upon a particular day and hour before this Court to show cause why they should not be restrained by temporary injunction of this Court from further interfering with or seizing or receiving or aiding, abetting, assisting, advising or encouraging any other person or persons to interfere with or seize any shipment of whiskey, beer, wine, brandy or other liquors that may be in the possession of your orator in its cars or depots within the Eastern District of the State of Oklahoma, consigned from points without the State of Oklahoma to points within the Eastern District of the State of Oklahoma, or from points within the Eastern District of the State of Oklahoma, and to points without the State of Oklahoma, and directed to at once deliver to the agent of your orator at its depot at Muskogee, Oklahoma, the respective shipments of liquor so as aforesaid wrongfully and unlawfully seized and taken therefrom.

Your orator further says that in the meantime and until said order to show cause may be heard and determined that restraining order issue restraining said defendants and each of them and their agents and employes from entering the cars and depots or other premises of your orator, and from taking therefrom intoxicating liquors shipped from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that said defendants and each of them, their agents and employes be restrained from in anywise interfering with your orator in its handling and delivery of such interstate shipments of intoxicating liquors, or inciting, aiding, abetting, advising or encouraging other persons so to do, and that the said defendants and each of them be further restrained from taking any steps looking to the forfeiture of any of the liquors mentioned in this your orator's bill as having heretofore been unlawfully seized and taken from your orator's depot at Muskogee, Oklahoma, and that the defendants now having charge or possession of any or all of said liquors shall retain same in their possession without change whatever as to the status of said liquors until said order to show cause may be heard and determined.

Your orator further prays that upon the hearing of this suit and the adjudication thereof, the said defendants and each of them be perpetually enjoined from interfering with or seizing or receiving or aiding, abetting, assisting, advising or encouraging any other person or persons to interfere with or seize any shipment of whiskey, beer, wine, brandy or other liquors that may be in the possession of your orator in its cars or depots within the Eastern District of the State of Oklahoma, consigned from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, or from points within the Eastern District of the State of Oklahoma, to points

without the State of Oklahoma, and that said defendants be directed to at once deliver to the agent of your orator at its depot at Muskogee, Oklahoma, the respective shipments of liquor so as aforesaid wrongfully and unlawfully seized and taken therefrom; and that said defendants and each of them be perpetually enjoined from entering the cars or depots or other premises of your orator in the Eastern District of the State of Oklahoma, and from taking therefrom intoxicating liquors shipped from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that the defendants and each of them be perpetually enjoined from taking any steps looking to the forfeiture of any of the liquors mentioned in this your orator's bill as having heretofore been unlawfully seized and taken from your orator's depot at Muskogee, Oklahoma.

And your orator further prays that your orator may have such other and further relief preliminary and final as to the Court may seem meet and proper, and which equity and good conscience may require, and for its costs.

CLIFFORD L. JACKSON,
M. D. GREEN,
Solicitors for Complainant.

UNITED STATES OF AMERICA,

88.

EASTERN DISTRICT OF OKLAHOMA.

W. M. Reinhardt, being first duly sworn upon oath states that he is the regularly appointed and acting station agent for the Complainant at its station at Muskogee, Oklahoma; that he has read the above and foregoing bill and knows the contents thereof and is familiar with the matters and things therein contained, and that the allegations and averments therein contained are true.

W. M. REINHARDT.

Subscribed and sworn to before me this 16th day of December, A. D. 1909.

ELMER C. WOOD,
Notary Public.

(SEAL.)

My commission expires Oct. 8, 1913.
Filed Dec. 17, 1909.

L. G. DISNEY,
Clerk U. S. Circuit Court, Eastern Dist. Okla.

On December 22, 1909, there was filed in said cause the following stipulation:

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR THE EASTERN DISTRICT OF THE STATE OF OKLAHOMA.
No. 1236.

AGREEMENT.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

ROBERT B. WATSON, W. F. BLAKEMORE, and CLARK
W. COMPTON, *Defendants.*

It is hereby stipulated and agreed as far as this hearing is concerned, by and between the plaintiff and the defendants herein, that the intoxicating liquors seized by the defendants, as mentioned in plaintiff's complaint, were seized by virtue and under a search warrant, issued from the Justice Court of M. G. Bailey, Justice of the Peace of Porter Township, in the County of Muskogee, State of Oklahoma, upon an affidavit which had been filed with said Justice Court.

That said Robert B. Watson is the duly qualified and acting Constable of Porter Township, Muskogee County, State of Oklahoma, and that the other defendants are and were at the time of the seizure of said liquors, deputies acting under him. And, that they, as such officers, were serv-

ing said search warrant issued by said Justice of the Peace at the time they seized the intoxicating liquors mentioned in plaintiff's bill.

A copy of the warrant under which said defendants were acting is attached hereto.

CLIFFORD L. JACKSON (G),
Attorney for Complainant.
W. J. CRUMP, Co-Atty.
Attorney for Defendants.

Filed in open court Dec. 22, 1909.

L. G. DISNEY,
Clerk U. S. Circuit Court, Eastern Dist. Okla.

SEARCH WARRANT.

STATE OF OKLAHOMA,

ss.

MUSKOGEE COUNTY,

IN THE NAME OF THE STATE OF OKLAHOMA:

To any Sheriff, Constable, Marshal or Policeman in the County of Muskogee, Greeting:

Proof by affidavit having been made this day before me by W. F. Blakemore showing that on the 7th day of December, 1909 M. K. & T. Ry., Freight depot at number between Okmulgee and Broadway Street, in a certain building described as one story brick used as freight depot and place to store intoxicating liquors for purpose of sale, in Muskogee City, did, then and there, unlawfully and wilfully have in their possession and under their control, and did, then and there keep, and do now have in their possession and under their control, and do now keep for the purpose of selling, bartering, giving away and otherwise furnishing certain intoxicating liquors, described as follows, to-wit: Wine, whiskey, beer, ale, gin, furniture and fixtures, and affiant further says that said defendants aforesaid, at said place and in said building, are now bartering, selling and giving away intoxicating liquors, to-wit: Whiskey, beer and wine, and

other compounds, the same being intoxicating, in violation of law, contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the State of Oklahoma:

And it appearing that there is probable cause for believing that such grounds are true, you are, therefore, commanded in the day or night time, to make immediate search of the above-described property, and to seize and safely keep and bring before the undersigned any and all of the above-described property, and to serve a copy of this warrant upon the defendants and each of them, or any person or persons in whose possession or under whose control the above-described property may be found, and to arrest the said defendants, and each of them, and if no person be found in the possession of said property, so state in your return and post a copy of this warrant on the door of the building or room wherein the said property is found and make return of this warrant within three days from the issuance thereof.

Dated this 7th day of December, 1909.

(Signed) M. G. BAILEY,

Justice of the Peace.

MUSKOGEE COUNTY,

ss.

STATE OF OKLAHOMA,

Received this writ, this 7th day of December, 1909 and executed the same by arresting said-----

----- and by seizing the following described property, the same being covered by this warrant, to-wit:

5 barrels whiskey, 3 drums whiskey, 2 cases beer, 2 cases wine, 3 kegs draft beer, 5 barrels beer, 50 cases whiskey on the----- day of-----, 19____, and by bringing the defendants and said property before the Court as Commanded.

R. B. WATSON, *Constable.*

W. F. BLAKEMORE, *Deputy.*

On December 22nd, 1909 an order of temporary injunction was entered in said cause as follows:

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR THE EASTERN DISTRICT OF THE STATE OF OKLAHOMA,
No. 1236.

TEMPORARY INJUNCTION.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

ROBERT B. WATSON, W. F. BLAKEMORE and CLARK
W. COMPTON,

Defendants.

Now on this 22nd day of December, 1909, this cause coming on to be heard upon the application of the complainant, for temporary injunction herein, and all parties being present and the Court having heard counsel for the parties and having seen all the papers and pleadings on file herein and being well and sufficiently advised in the premises and it appearing to the Court that temporary injunction should issue against the defendants herein,

It is therefore ordered that the defendants, Robert B. Watson, W. F. Blakemore and Clark W. Compton be, and they are hereby enjoined and restrained from interfering with or seizing or receiving or aiding, abetting, advising or encouraging any other person or persons to interfere with or seize any shipment of whiskey, beer, wine, brandy or other liquors that may be in the possession of the complainant, the Missouri, Kansas & Texas Railway Company, consigned from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, or from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that said defendants and each of them be and they are hereby enjoined and restrained from entering the cars and depots or other premises of the complainant, Missouri, Kan-

sas & Texas Railway Company in the Eastern District of the State of Oklahoma, and from taking therefrom intoxicating liquors shipped from points without the State of Oklahoma to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma to points without the State of Oklahoma, and that the said defendants and each of them be, and they are hereby enjoined from taking any steps looking to the forfeiture of any of the liquors mentioned in the complainant's bill of complaint herein as having been heretofore unlawfully seized and taken from complainant's depot at Muskogee, Oklahoma.

And it is further ordered that the said defendants forthwith deliver over to the complainant or its agent at its depot at Muskogee, Oklahoma, the articles specified in the bill of complaint on file in this cause as having been seized and taken away from the depot of the complainant at Muskogee, Oklahoma, on the 7th day of December, 1909, and described in said bill of complaint as follows:

One box of whiskey consigned from Harvest & King D. Co., Kansas City, Missouri, to shippers order, notify Clarence A. Hill, Muskogee, Oklahoma,

One box of whiskey consigned from Harvest & King D. Co., Kansas City, Missouri, to Geo. K. Davidson, Muskogee, Oklahoma.

One case beer consigned from A. V. Co., Kansas City, Missouri, to F. G. Manson, Muskogee, Oklahoma.

Five cases whiskey consigned from O. F. Haley, Gainesville, Texas, to E. M. McFarland, Muskogee, Oklahoma.

One case whiskey consigned from Levi Shier Dis. Co., Kansas City, Missouri, to shippers order, notify James P. Wallace, Muskogee, Oklahoma,

One barrel beer consigned from J. B., Kansas City, Missouri, to A. J. Gardenhier, Muskogee, Oklahoma,

One barrel beer consigned from J. B., Kansas City, Missouri, to Jno. L. Winener, Muskogee, Oklahoma.

One case beer consigned from Royal Bwg. Co., Kansas City, Missouri, to shippers order, notify M. Ellis, Muskogee, Oklahoma,

One box liquor consigned from Maryland Wine & L. Co., Kansas City, Missouri, to shippers order, notify Henry Williams, Muskogee, Oklahoma,

Two boxes liquor consigned from Maryland Wine & L. Co., Kansas City, Missouri, to shippers order, notify Mike Adamson, Muskogee, Oklahoma,

Three boxes liquor consigned from Maryland Wine & L. Co., Kansas City, Missouri, to shippers order, notify C. Jones, Muskogee, Oklahoma,

One cask beer consigned from Reder Mfg. Co., Joplin, Missouri, to R. G. Emmert, Muskogee, Oklahoma,

One cask beer consigned from Reder Mfg. Co., Joplin, Missouri, to F. C. Sananire, Muskogee, Oklahoma,

Two cases liquor consigned from Reder Mfg. Co., Joplin, Missouri, to shippers order, notify Jack Gordon, Muskogee, Oklahoma.

One drum whiskey in glass consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify Henry Hawkins, Muskogee, Oklahoma.

Two boxes whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify J. Gordon, Muskogee, Oklahoma.

One box whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify R. Butler, Muskogee, Oklahoma,

One box whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify R. A. Butler, Muskogee, Oklahoma.

One drum whiskey consigned from Danciger Bros., Kansas City, Missouri, to shippers order, notify Middleton & Davis, Muskogee, Oklahoma,

One box whiskey consigned from Danciger Bros.,

Kansas City, Missouri, to shippers order, notify J. A. Hardick, Muskogee, Oklahoma.

One drum whiskey consigned from Daciger Bros., Kansas City, Missouri, to shippers order, notify Middleton & Davis, Muskogee, Oklahoma,

16 barrels beer consigned from Tom Owens, Muskogee, Oklahoma, to Redell Mfg. & Supply Co., at Joplin, Missouri,

Five barrels whiskey consigned from Lee Spurlock, Muskogee, Oklahoma, to Casey Swasey Co., Ft. Worth, Texas.

And by agreement of the parties, complainant and defendants, it is further ordered that the following articles specified in the bill of complaint on file in this case as having been seized and taken away from the depot of the complainant at Muskogee, Oklahoma, described in said bill of complaint as follows:

Jno. Williams.....	10 cs. whiskey,
Jack Gordon.....	1 cs. whiskey,
Will Smith.....	7 cs. whiskey,
J. H. Davis.....	1 cs. whiskey,
J. W. Winford.....	3 cs. whiskey,
B. McCurtain.....	3 casks beer,
Eagles Club.....	3 kegs beer,
Eagles Club.....	3 casks beer,
Henry Baker.....	1 cask beer,
W. Butz.....	1 cask beer,
Geo. Anderson.....	3 cases whiskey,
J. W. Strawhorn.....	1 case whiskey,
J. E. Ewing.....	1 case whiskey,
J. T. Owens.....	2 cs. whiskey,
Red Cross Drug Co.....	2 cases wine,
No Marks.....	2 casks beer,

and which said articles are now in the possession of the defendants shall be safely and securely kept by said defendants in the condition in which they were when seized, and that the restraining order heretofore granted in this

case continue in full force and effect as to such goods until further order of this Court.

This order to be in full force and effect until further order of this Court upon the filing of a bond by the complainant in the sum of \$2,500.00 to be approved by the Clerk of this Court.

RALPH E. CAMPBELL,

Judge, United States Circuit Court for the Eastern District of Oklahoma.

O. K. as to form.

W. J. CRUMP, *Co. Atty.*

Filed December 22, 1909,

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern Dist. Okla.

On January 6th, 1910, the respondents filed their demurrer in said cause as follows:

UNITED STATES OF AMERICA,

STATE OF OKLAHOMA,

ss.

EASTERN DISTRICT.

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND FOR SAID DISTRICT.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

ROBERT B. WATSON, W. F. BLAKEMORE and CLARK
W. COMPTON,
Defendants.

No.....

DEMURRER FOR LACK OF JURISDICTION and EQUITY

These respondents, Robert B. Watson, W. F. Blakemore and Clark W. Compton, by protestation, not confessing or acknowledging all, or any, of the matters or things in the said bill of complaint contained, to be true, in such manner

as the same are therein set forth and alleged, demur to the said bill; and for cause of demurrer show:

That it appears by the complainant's own showing by the said bill that it is not entitled to the relief prayed by said bill against these respondents, or any of them.

II.

That it appears from complainant's said bill of complaint that this Court has no jurisdiction to hear and determine this action, and that the relief prayed for is sought in direct violation of the Seventh and the Eleventh Amendments to the Constitution of the United States, and in direct violation of Section 720 of the Revised Statutes of the United States.

III.

That complainant's said bill of complaint is wholly without equity.

WHEREFORE, and for divers other good causes of demurrer in said bill, these respondents demur thereto, and they and each of them pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to complainant's said bill; and they and each of them humbly pray to be hence dismissed with their reasonable costs in their half sustained.

FRED S. CALDWELL,
Solicitor for Respondents.

VERIFICATION.

STATE OF OKLAHOMA,

ss.

COUNTY.....

Fred S. Caldwell being first duly sworn, on oath says: That he is the solicitor for the respondents to the foregoing demurrer in the above entitled action, and that in his opinion the foregoing demurrer is well founded

in point of law; and on behalf of said respondents, and each of them, says, that the same is not interposed for delay.

FRED S. CALDWELL,

Subscribed and sworn to before me this 6th day of January, 1910.

L. G. DISNEY, *Clerk.*

By OTIS LORTON, *Deputy.*

My Commission Expires-----
SEAL.

Filed January 6, 1910,

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern Dist. Okla.

On December 17th, 1909, there was filed in the United States Circuit Court the following bill:

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR THE EASTERN DISTRICT OF THE STATE OF OKLAHOMA.

No.....

BILL IN EQUITY FOR INJUNCTION.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

W. F. BLAKEMORE, ED ODOM, J. R. COKER and CLAR-
ENCE TURNER,

Defendants.

*To the Honorable Judges of the Circuit Court of the United
States Within and for the Eastern District of the State of
Oklahoma:*

The Missouri, Kansas & Texas Railway Company brings
this its bill of complaint against W. F. Blakemore, Ed Odom,
J. R. Coker and Clarence Turner, and humbly complaining
says:

That your orator, Missouri, Kansas & Texas Railway Com-
pany is a corporation created, organized and existing under
and by virtue of the laws of the State of Kansas, and is a

citizen and resident of said State, and that the defendants are citizens and residents of the Eastern District of the State of Oklahoma.

Further complaining, your orator states that it is now and for many years past has been a common carrier of goods for hire, owning and operating lines of railroad in the States of Missouri, Kansas and Oklahoma, and engaged in the transportation of all classes of goods that may be lawfully transported from one state into another as well as from points within the State of Oklahoma to other points within the State of Oklahoma, and to points without the State of Oklahoma, and as such common carrier your orator has built up an extensive and valuable business, and that as such common carrier of goods for hire it becomes your orator's duty to accept for transportation from points without the State of Oklahoma to points within the State of Oklahoma, and from points within the State of Oklahoma to points without the State of Oklahoma, intoxicating liquors of various characters, including amongst others, whiskey, beer, wine and brandy, and that your orator cannot lawfully refuse because of its being such common carrier to receive at points without the State of Oklahoma, for shipment to points within the State of Oklahoma, intoxicating liquors, nor can it lawfully refuse to receive such shipments at points within the State of Oklahoma, for shipment to points without the State of Oklahoma, and cannot lawfully refuse to transport such interstate shipments of liquor, and it is so receiving for shipment and is so transporting in the ordinary course of its business as a common carrier such interstate shipments of liquor from points without the State of Oklahoma to points within the State of Oklahoma, and from points within the State of Oklahoma, to points without the State of Oklahoma; that the volume of such interstate shipments of liquor so tendered to your orator for shipment in the ordinary course of its business as a common carrier is of a large volume, and the value of such shipments within

the six months last past aggregate many thousands of dollars, and that the revenues to your orator upon such shipments have within the six months last past aggregated more than Two Thousand Dollars.

Further complaining, your orator states that when such interstate shipments of liquor are tendered to it for shipment it is required by law to issue its bills of lading therefor, whereby it binds itself to transport said goods from such respective points without this State to such respective points within this State and from such respective points within this State to such respective points without this State, and to deliver such respective shipments of liquor to the respective consignees at the respective points of destination named in said bills of lading, and that if your orator fails to so deliver said goods in accordance with said bills of lading, your orator becomes liable in damages to the various consignees for the full value of said goods.

Further complaining, your orator states that owing to the large amount of such interstate shipments of liquor that will hereafter be shipped over your orator's line the value of its business in transporting said goods is worth to your orator in the immediate future far in excess of the sum of Two Thousand Dollars.

Further complaining, your orator states that the above named defendants and each of them are interfering with the interstate business of your orator in the handling and transporting and delivery of such interstate shipments of liquor, claiming to act under the authority of an Act of the Legislature of the State of Oklahoma, entitled:

“An Act to establish a State Agency and Local Agencies for the sale of Intoxicating Liquors for certain purposes; and providing for referring the same to the people; prohibiting the manufacture, sale, barter, giving away, or otherwise furnishing of Intoxicating Liquors, except as herein provided; providing for the appointment of an attorney, and for the enforcement of the provisions of this Act: Making an appropriation and

declaring an emergency.”

approved March 24, 1908, and that on the 11th day of December, 1909, the defendants, W. F. Blakemore and Clarence Turner, unlawfully and wrongfully entered the depot building of your orator at its station at Eufaula, in the said Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire, and upon which the freight charges had not been paid and bills of lading had not been surrendered, and no delivery made by your orator:

One barrel whiskey from Danciger Bros., Kansas City, Missouri, to J. Stubblefield, Eufaula, Oklahoma.

One box of whiskey from Danciger Bros., Kansas City, Missouri, to B. B. Maxville, Eufaula, Oklahoma.

Two barrels beer from Epstein Block, Sedalia, Missouri, to H. McNeal, Eufaula, Oklahoma,

Two barrels beer from Epstein Block, Sedalia, Missouri, to H. McNeal, Eufaula, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to H. McNeal, Eufaula, Oklahoma.

Four boxes whiskey from Edwin Block Distilling Co., Kansas City, Missouri, to H. McNeal, Eufaula, Oklahoma,

One box liquor from Midland Wine & Distilling Co., Kansas City, Missouri, to W. H. White, Eufaula, Oklahoma,

One box whiskey from Danciger Bros., Kansas City, Missouri, to Willie Welch, Eufaula, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to Willie Welch, Eufaula, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to Willie Welch, Eufaula, Oklahoma,

One barrel beer from Midland Wine & Distilling Co., Kansas City, Missouri, to W. H. White, Eufaula, Oklahoma,

One barrel beer from Midland Wine & Distilling Co., Kansas City, Missouri, to W. H. White, Eufaula, Oklahoma,

One barrel beer from Midland Wine & Distilling Co., Kansas City, Missouri, to W. H. White, Eufaula, Oklahoma,

Two boxes liquor from Independent Distilling Co., Kansas City, Missouri, to S. W. Watts, Eufaula, Oklahoma,

One cask whiskey from Schier Distilling Company, Kansas City, Missouri, to W. M. Redmond, Eufaula, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to D. E. Davis, Eufaula, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to J. M. Carr, Eufaula, Oklahoma,

Six boxes whiskey from Harvest King Distilling Co., Kansas City, Missouri, to W. E. Carr, Eufaula, Oklahoma,

Two boxes whiskey from Harvest King Distilling Co., Kansas City, Missouri, to W. E. Carr, Eufaula, Oklahoma,

Three boxes whiskey from Harvest King Distilling Co., Kansas City, Missouri, to W. E. Carr, Eufaula, Oklahoma,

One case malt from Harper & R., Ft. Smith, Arkansas, to W. Clemons, Eufaula, Oklahoma,

One box liquor from Midland Wine & Distilling Co., Kansas City, Missouri, to R. H. Woolbright, Eufaula, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to A. C. South, Eufaula, Oklahoma,

One box whiskey from Danciger Bros., Kansas City, Missouri, to J. T. Sarogin, Eufaula, Oklahoma,

Two casks beer from Ft. Smith Liquor Co., Ft. Smith, Arkansas, to J. F. Sanders, Eufaula, Oklahoma,

One box liquor from Midland Wine & Distilling Co., Kansas City, Missouri, to W. Stafford, Eufaula, Oklahoma,

One box whiskey from Harvest King Distilling Co., Kansas City, Missouri, to Wm. Tobler, Eufaula, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to B. H. Stanridge, Eufaula, Oklahoma.

Further complaining, your orator states that upon the same day, to-wit: December 11, 1909, the defendants, Ed Odom and J. R. Coker, unlawfully and wrongfully entered the depot building of your orator at its station at Checotah in the said Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire, and upon which the freight charges had not been paid and bills of lading had not been surrendered, and no delivery made by your orator:

One box whiskey from Danciger Bros., Kansas City, Missouri, to B. F. Draper, Checotah, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to B. F. Draper, Checotah, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to B. F. Draper, Checotah, Oklahoma,

One box whiskey from Danciger Bros., Kansas City, Missouri, to B. F. Draper, Checotah, Oklahoma,

One box whiskey from M. A. S., Dallas, Texas, to Jim Killings, Checotah, Oklahoma.

One drum whiskey from Danciger Bros., Kansas City, Missouri, to A. Martin, Checotah, Oklahoma,

Two casks liquor from Swope Mangold, Dallas, Texas, to Lucas & Odom, Checotah, Oklahoma,

One cask beer from Royal Brewing Co., Kansas City, Missouri, to Luke Harrison, Checotah, Oklahoma,

One cask beer from Royal Brewing Co., Kansas City, Missouri, to Luke Harrison, Checotah, Oklahoma,

One box whiskey from Earl Distilling Co., Kansas City, Missouri, to W. Scott, Checotah, Oklahoma,

Two boxes whiskey from Daneiger Bros., Kansas City, Missouri, to Warren Taylor, Checotah, Oklahoma,

Two boxes whiskey from Daneiger Bros., Kansas City, Missouri, to Warren Taylor, Checotah, Oklahoma,

One cask whiskey from Daneiger Bros., Kansas City, Missouri, to Warren Taylor, Checotah, Oklahoma,

One cask whiskey consigned from Daneiger Bros., Kansas City, Missouri, to Warren Taylor, Checotah, Oklahoma,

Two boxes whiskey from Daneiger Bros., Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

One cask and one box whiskey from B. S. Flersheim, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Two boxes whiskey from Midland Wine & Distilling Co., Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Two boxes whiskey from Midland Wine & Distilling Co., Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

One box whiskey from Earl Distilling Co., Kansas City, Missouri, to W. Scott, Checotah, Oklahoma,

One case whiskey from M. C., Kansas City, Missouri, to C. W. Durham, Checotah, Oklahoma,

One box whiskey from Harvest King Co., Kansas City, Missouri, to F. Farris, Checotah, Oklahoma,

Two barrels beer from J. Bachmann, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Two barrels beer from J. Bachmann, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Three barrels beer from J. Bachmann, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Three barrels beer from J. Bachmann, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Two barrels beer from J. Bachman, Kansas City,

Missouri, to W. Clark, Checotah, Oklahoma.

Two barrels beer from G. Schrader, Kansas City,
Missouri, to W. Clark, Checotah, Oklahoma,

Two barrels beer from G. Schrader, Kansas City,
Missouri, to W. Clark, Checotah, Oklahoma.

Two barrels beer from G. Schrader, Kansas City,
Missouri, to W. Clark, Checotah, Oklahoma,

Two barrels beer from G. Schrader, Kansas City,
Missouri, to W. Clark, Checotah, Oklahoma,

Two barrels beer from G. Schrader, Kansas City,
Missouri, to W. Clark, Checotah, Oklahoma,

Three barrels beer from G. Schrader, Kansas City,
Missouri, to B. F. Draper, Checotah, Oklahoma,

Three barrels beer from J. Bachman, Kansas City,
Missouri, to B. F. Draper, Checotah, Oklahoma,

Three barrels beer from J. Bachman, Kansas City,
Missouri, to B. F. Draper, Checotah, Oklahoma,

Two barrels beer from J. Bachman, Kansas City,
Missouri, to W. Taylor, Checotah, Oklahoma.

Further complaining, your orator states that the above shipments so wrongfully seized by the said defendants are now wrongfully and unlawfully held by defendant Ed Odom at Checotah, Oklahoma, and that unless prevented by order of this Court from so doing the said defendants will at an early day cause a pretended order of forfeiture of said liquor to be made as against your orator and will permanently withhold the same from your orator, claiming to do so by virtue of the State Statute of the State of Oklahoma, hereinabove referred to.

Further complaining, your orator states that the said defendants decline to deliver back to your orator the above specified interstate shipments of liquor so as aforesaid wrongfully and unlawfully seized from your orator at its depots at Eufaula and Checotah, Oklahoma, and that if said interstate shipments of liquor so unlawfully and wrongfully seized from your orator as aforesaid are not promptly delivered back into the possession of your orator that a large

number of suits will be instituted against your orator by persons having or claiming an interest in said shipments to the great expense and annoyance of your orator.

Further complaining, your orator states that by virtue of its business as a common carrier of goods for hire, it will be compelled to receive large quantities of interstate shipments of liquor consigned from points outside the State of Oklahoma to points within the Eastern District of the State of Oklahoma, and from points from the Eastern District of the State of Oklahoma to points within the State of Oklahoma, the value of which shipments will in the course of one year's time exceed the sum of many thousands of dollars, and the earnings of your orator in transporting same will be much more than the sum of Two Thousand Dollars, exclusive of interest and costs, and that the defendants herein are threatening to continue this wrongful and unlawful interference with the interstate business of your orator in the transportation and delivery of these interstate shipments of goods, and which interference on their part will involve your orator in innumerable law suits at various points with various parties who may offer to your orator at points outside of the State of Oklahoma shipments of liquor consigned to points within the Eastern District of the State of Oklahoma, and at points within the Eastern District of the State of Oklahoma, shipments of liquor consigned to points without the State of Oklahoma, and to all of which persons your orator would be required to issue its bill of lading covering interstate shipment of goods so offered to it, and for whom it will be under the law required to transport said liquor in accordance with said bills of lading.

Further complaining, your orator states that under the Constitution and laws of the United States it has lawfully carried over its line from points without the State of Oklahoma, consigned to points within the Eastern District of the State of Oklahoma, the shipments hereinabove specified which have so as aforesaid been wrongfully and unlaw-

fully seized from your orator, and that your orator in accordance with its lawful duty must engage in the future in the transportation of these intoxicating liquors from points without the State of Oklahoma to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and there deliver said consignments to the consignee named in the bills of lading, and that the defendants by their course are seeking to deny the right of your orator under the Constitution and laws of the United States so to do, and to deprive your orator of the right so to do as guaranteed by it by the Constitution and laws of the United States, and that your orator is entitled to be protected in its said right by the order of this Court.

Further complaining, your orator states that it believes and charges that the defendants are not financially able to respond in damages for the large sums of money in which your orator will be damaged by reason of the continued wrongs and injuries heretofore practiced and hereafter to be practiced by said defendants on your orator as hereinabove alleged.

To the end, therefore, that your orator may have the relief to which it is justly entitled in the premises, the matters herein being cognizable and relievable only in a Court of equity, your orator prays the Court to grant due process for subpoena directed to the said defendants and each of them requiring and commanding them to appear herein and answer, but not under oath, answer under oath being expressly waived to the several allegations in this your orator's bill contained.

Your orator further prays that an order issue against said defendants and each of them returnable upon a particular day and hour before this Court to show cause why they should not be restrained by temporary injunction of this Court from further interfering with or seizing or receiving or aiding, abetting, assisting, advising or encour-

aging any other person or persons to interfere with or seize any shipment of whiskey, beer, wine, brandy or other liquors that may be in the possession of your orator in its cars or depots within the Eastern District of the State of Oklahoma, consigned from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, or from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and directed to at once deliver to the agents of your orator at its depots at Eufaula and Checotah, Oklahoma, respectively, the respective shipments of liquor so as aforesaid wrongfully and unlawfully seized and taken therefrom.

Your orator further prays that in the mean time and until said order to show cause may be heard and determined that restraining order issue restraining said defendants and each of them and their agents and employes from entering the cars and depots or other premises of your orator, and from taking therefrom intoxicating liquors shipped from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that said defendants and each of them, their agents and employes be restrained from in anywise interfering with your orator in its handling and delivery of such interstate shipments of intoxicating liquors, or inciting, aiding, abetting, advising or encouraging other persons so to do, and that the said defendants and each of them be further restrained from taking any steps looking to the forfeiture of any of the liquors mentioned in this your orator's bill as having heretofore been unlawfully seized and taken from your orator's depots at Eufaula and Checotah, Oklahoma, and that the defendants now having charge or possession of any or all of said liquors shall retain same in their possession without any change whatever as to the status of said liquors until said order to show cause may be heard and determined.

Your orator further prays that upon the hearing of this suit and adjudication thereof, the said defendants and each of them be perpetually enjoined from interfering with or seizing or receiving or aiding, abetting, assisting, advising or encouraging any other person or persons to interfere with or seize any shipment of whiskey, beer, wine, brandy or other liquors that may be in the possession of your orator in its cars or depots within the Eastern District of the State of Oklahoma, consigned from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, or from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that said defendants be directed to at once to deliver to the agents of your orator at its depots at Eufaula and Checotah, Oklahoma, respectively, the respective shipments of liquor so as aforesaid wrongfully and defendants and each of them be perpetually enjoined from entering the cars or depots or other premises of your orator in the Eastern District of the State of Oklahoma and from taking therefrom intoxicating liquors shipped from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma and from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that the defendants and each of them be perpetually enjoined from taking any steps looking to the forfeiture of any of the liquors mentioned in this your orator's bill as having heretofore been unlawfully seized and taken from your orator's depots at Eufaula and Checotah, Oklahoma.

And your orator further prays that your orator may have such other and further relief preliminary and final as to the Court may seem meet and proper, and which equity and good conscience may require, and for its costs.

CLIFFORD L. JACKSON

and

M. D. GREEN,

Solicitors for Complainant.

UNITED STATES OF AMERICA,

ss.

EASTERN DISTRICT OF OKLAHOMA.

Harry C. Mitchell, being first duly sworn upon oath states that he is the regularly appointed and acting station agent for the Complainant at its station at Eufaula, Oklahoma; that he has read the above and foregoing bill and knows the contents thereof and is familiar with the matters and things therein contained, and that the allegations and averments therein contained are true, except the matters alleged to have occurred at Checotah, Oklahoma, as to which affiant has no knowledge.

HARRY C. MITCHELL.

Subscribed and sworn to before me this 13th day of December, A. D., 1909.

ELMER C. WOOD,

Notary Public.

My Commission Expires October 8, 1913.

SEAL.

UNITED STATES OF AMERICA,

ss.

EASTERN DISTRICT OF OKLAHOMA.

Patrick Henry Nolan, being first duly sworn upon oath states that he is the regularly appointed and acting station agent for the Complainant at its station at Checotah, Oklahoma; that he has read the above and foregoing bill and knows the contents thereof and is familiar with the matters and things therein contained, and that the allegations and averments therein contained are true, except the matters alleged to have occurred at Eufaula, Oklahoma, as to which affiant has no knowledge.

PATRICK HENRY NOLAN.

Subscribed and sworn to before me this 13th day of December, A. D., 1909.

ELMER C. WOOD,

Notary Public.

My Commission Expires October 8, 1913.
SEAL.

Filed December 17, 1909,

L. G. DISNEY,
*Clerk, United States Circuit Court for the Eastern District
Oklahoma.*

On December 22d, 1909, an order of temporary injunction was entered in said cause as follows:

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR THE EASTERN DISTRICT OF THE STATE OF OKLAHOMA.
No. 1237.

TEMPORARY INJUNCTION.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

W. F. BLAKEMORE, ED ODOM, J. R. COKER, and
CLARENCE TURNER, *Defendants.*

Now on this 22nd day of December, this cause coming on to be heard upon the application of the complainant, for temporary injunction herein, and all parties being present and the Court having heard counsel for the parties and having seen all the papers and pleadings on file herein and being well and sufficiently advised in the premises and it appearing to the Court that temporary injunction should issue against the defendants herein,

It is therefore ordered that the defendants, W. F. Blake-more, Ed Odom, J. R. Coker and Clarence Turner be and they are hereby enjoined and restrained from interfering with or seizing or receiving or aiding, abetting, advising or encouraging any other person or persons to interfere with or seize any shipment of whiskey, beer, wine, brandy or other liquors that may be in the possession of the complainant, the Missouri, Kansas & Texas Railway Company within the Eastern District of the State of Oklahoma, con-

signed from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, or from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that said defendants and each of them be, and they are hereby enjoined and restrained from entering the cars and depots or other premises of the complainant, Missouri, Kansas & Texas Railway Company in the Eastern District of the State of Oklahoma, and from taking therefrom intoxicating liquors shipped from points without the State of Oklahoma to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma to points without the State of Oklahoma, and that the said defendants and each of them be, and they are hereby enjoined from taking any steps looking to the forfeiture of any of the liquors mentioned in the complainant's bill of complaint herein as having been heretofore unlawfully seized and taken from complainant's depots at Eufaula and Checotah, Oklahoma.

And it is further ordered that the said defendants forthwith deliver over to the complainant or its agent at its depot at Eufaula, Oklahoma, the articles specified in the bill of complaint on file in this cause as having been seized and taken away from the depot of the complainant at Eufaula, Oklahoma, on the 11th day of December, 1909, and described in said bill of complaint as follows:

One barrel whiskey from Danciger Bros., Kansas City, Missouri, to J. Stubblefield, Eufaula, Oklahoma.

One box whiskey from Danciger Bros., Kansas City, Missouri, to B. B. Maxville, Eufaula, Oklahoma.

Two barrels beer from Epstein Block, Sedalia, Missouri, to H. McNeal, Eufaula, Oklahoma.

Two barrels beer from Epstein Block, Sedalia, Missouri, to H. McNeal, Eufaula, Oklahoma.

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to H. McNeal, Eufaula, Oklahoma.

Four boxes whiskey from Edwin Block Distilling Co., Kansas City, Missouri, to H. McNeal, Eufaula, Oklahoma,

One box liquor from Midland Wine & Distilling Co., Kansas City, Missouri, to W. H. White, Eufaula, Oklahoma,

One box whiskey from Danciger Bros., Kansas City, Missouri, to Willie Welch, Eufaula, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to Willie Welch, Eufaula, Oklahoma.

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to Willie Welch, Eufaula, Oklahoma.

One barrel beer from Midland Wine & Distilling Co., Kansas City, Missouri, to W. H. White, Eufaula, Oklahoma,

One barrel beer from Midland Wine & Distilling Co., Kansas City, Missouri, to W. H. White, Eufaula, Oklahoma,

Two boxes liquor from Independent Distilling Co., Kansas City, Missouri, to S. W. Watts, Eufaula, Oklahoma,

One cask whiskey from Schier Distilling Company, Kansas City, Missouri, to W. M. Redmond, Eufaula, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to D. E. Davis, Eufaula, Oklahoma.

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to J. M. Carr, Eufaula, Oklahoma,

Six boxes whiskey from Harvest King Distilling Co., Kansas City, Missouri, to W. E. Carr, Eufaula, Oklahoma,

Two boxes whiskey from Harvest King Distilling Co., Kansas City, Missouri, to W. E. Carr, Eufaula, Oklahoma,

Three boxes whiskey from Harvest King Distilling Co., Kansas City, Missouri, to W. E. Carr, Eufaula, Oklahoma,

One case malt from Harper & R., Ft. Smith, Arkansas, to W. Clemons, Eufaula, Oklahoma,

One box liquor from Midland Wine & Distilling Co., Kansas City, Missouri, to R. H. Woolbright, Eufaula, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to A. C. South, Eufaula, Oklahoma,

One box whiskey from Danciger Bros., Kansas City, Missouri, to J. T. Sarogin, Eufaula, Oklahoma,

Two casks beer from Ft. Smith Liquor Co., Ft. Smith, Arkansas, to J. F. Sanders, Eufaula, Oklahoma,

One box liquor from Midland Wine & Distilling Co., Kansas City, Missouri, to W. Stafford, Eufaula, Oklahoma.

One box whiskey from Harvest King Distilling Co., Kansas City, Missouri, to Wm. Tobler, Eufaula, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to B. H. Standridge, Eufaula, Oklahoma,

And it is further ordered that the said defendants forthwith deliver over to the complainant or its agent at its depot at Checotah, Oklahoma, the articles specified in the bill of complaint on file in this case as having been seized and taken away from the depot of the complainant at Checotah, Oklahoma, on the 11th day of December, 1909, and described in said bill of complaint as follows:

One box whiskey from Danciger Bros., Kansas City, Missouri, to B. F. Draper, Checotah, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to B. F. Draper, Checotah, Oklahoma.

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to B. F. Draper, Checotah, Oklahoma.

One box whiskey from Danciger Bros., Kansas City, Missouri, to B. F. Draper, Checotah, Oklahoma.

One box whiskey, from M. A. S., Dallas, Texas, to Jim Killings, Checotah, Oklahoma.

One drum whiskey from Danciger Bros., Kansas City, Missouri, to A. Martin, Checotah, Oklahoma.

Two casks liquor from Swope Mangold, Dallas, Texas, to Lucas & Odom, Checotah, Oklahoma,

One cask beer from Royal Brewing Co., Kansas City, Missouri, to Luke Harrison, Checotah, Oklahoma.

One cask beer from Royal Brewing Co., Kansas City, Missouri, to Luke Harrison, Checotah, Oklahoma.

One box whiskey from Earl Distilling Co., Kansas City, Missouri, to W. Scott, Checotah, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to Warren Taylor, Checotah, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to Warren Taylor, Checotah, Oklahoma,

One cask whiskey from Danciger Bros., Kansas City, Missouri, to Warren Taylor, Checotah, Oklahoma,

One cask whiskey consigned from Danciger Bros., Kansas City, Missouri, to Warren Taylor, Checotah, Oklahoma,

Two boxes whiskey from Danciger Bros., Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

One cask and one box whiskey from B. S. Flersheim, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Two boxes whiskey from Midland Wine & Distilling Co., Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Two boxes whiskey from Midland Wine & Distilling Co., Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

One box whiskey from Earl Distilling Co., Kansas City, Missouri, to W. Scott, Checotah, Oklahoma,

One case whiskey from M. C., Kansas City, Missouri, to C. W. Durham, Checotah, Oklahoma,

One box whiskey from Harvest King Co., Kansas City, Missouri, to F. Farris, Checotah, Oklahoma,

Two barrels beer from J. Bachmann, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Two barrels beer from J. Bachmann, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Two barrels beer from J. Bachmann, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Two barrels beer from J. Bachmann, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Two barrels beer from J. Bachmann, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma.

Two barrels beer from G. Schrader, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Two barrels beer from G. Schrader, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma.

Two barrels beer from G. Schrader, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma,

Two barrels beer from G. Schrader, Kansas City, Missouri, to W. Clark, Checotah, Oklahoma.

Three barrels beer from G. Schrader, Kansas City, Missouri, to B. F. Draper, Checotah, Oklahoma,

Three barrels beer from J. Bachmann, Kansas City, Missouri, to B. F. Draper, Checotah, Oklahoma,

Three barrels beer from J. Bachmann, Kansas City, Missouri, to B. F. Draper, Checotah, Oklahoma,

Two barrels beer from J. Bachmann, Kansas City, Missouri, to W. Taylor, Checotah, Oklahoma.

This order to be in full force and effect until further order of this court upon the filing of a bond by the complainant in the sum of Fifteen Hundred Dollars (\$1,500.00) to be approved by the Clerk of this Court.

RALPH E. CAMPBELL,

Judge United States Circuit Court for the Eastern District of the State of Oklahoma.

O. K. as to form.

W. J. CRUMP, Co. Atty.

Filed Dec. 22, 1909.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern Dist. Okla.

On January 6th, 1910, respondents filed in said cause the following demurrer:

UNITED STATES OF AMERICA,
STATE OF OKLAHOMA,

ss.

EASTERN DISTRICT.

No.

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR SAID DISTRICT.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

W. F. BLAKEMORE, ED ODOM, J. R. COKER and
CLARENCE TURNER, *Defendants.*

DEMURRER FOR LACK OF JURISDICTION AND
EQUITY.

These respondents, W. F. Blakemore, Ed Odom, J. R. Coker and Clarence Turner, by protestation, not confessing or acknowledging all, or any, of the matters or things in the said bill of complaint contained, to be true, in such manner as the same are therein set forth and alleged, demur to the said bill; and for cause of demurrer show:

I.

That it appears by complainant's own showing by the said bill that it is not entitled to the relief prayed by said bill against these respondents or any of them.

II.

That it appears from complainant's said bill of complaint that this Court has no jurisdiction to hear and determine this

action, and that the relief prayed for is sought in direct violation of the Seventh and the Eleventh Amendment to the Constitution of the United States, and in direct violation of Section 720 of the Revised Statutes of the United States.

III.

That complainant's said bill of complaint is wholly without equity.

WHEREFORE, and for divers other good causes of demurrer in said bill, these respondents demur thereto, and they and each of them pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to complainants' said bill; and they and each of them humbly pray to be hence dismissed with their reasonable costs in their half sustained.

FRED S. CALDWELL,
Solicitor for Respondents.

VERIFICATION.

STATE OF OKLAHOMA,
LOGAN COUNTY.

ss.

Fred S. Caldwell, being first duly sworn, on oath says: That he is the solicitor for the respondents to the foregoing demurrer in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point of law; and on behalf of said respondents, and each of them says, that the same is not interposed for delay.

FRED S. CALDWELL.

Subscribed and sworn to before me this 6th day of Jan. 1910.

L. G. DISNEY, *Clerk.*
By OTIS LORTON, *Deputy.*

My Commission exp.....

Filed Jan. 6, 1910.

L. G. DISNEY,
Clerk U. S. Circuit Court, Eastern Dist. Okla.

On December 24th, 1909, there was filed in the U. S. Circuit Court the following bill:

UNITED STATES OF AMERICA,

STATE OF OKLAHOMA,

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR
THE EASTERN DISTRICT OF OKLAHOMA.

IN EQUITY.

No. 1242.

THE O. F. HALEY COMPANY, *a corporation,*
Complainant.

VS.

S. W. STONE, State Dispensary Agent; JOHN HAYES,
ASSISTANT Counsel to the Governor; CLARK COM-
PTON, W. F. BLAKEMORE, JOHN L. WISENER, Sheriff
J. M. BRUCKER and GRANT HAMLIN, HOLMES
AKERS and W. E. LANDRUM, H. F. NEWBLOCK
and T. A. MAXWELL, *Defendants.*

BILL OF COMPLAINT.

*To the Honorable Judges of the Circuit Court of the United
States for the Eastern District of Oklahoma:*

Your complainant, The O. F. Haley Company, which is a citizen of the United States, and of the State of Texas, and which is a corporation duly incorporated under and by virtue of the laws of State of Texas, brings this, its bill of complaint, against S. W. Stone, John Hayes, Clark Compton, W. F. Blakemore, John L. Wisener, J. M. Brucker, Grant Hamlin, Holmes Akers and W. E. Landrum, H. F. Newblock and T. A. Maxwell, hereinafter styled defendants, and occupying the official positions hereinafter more fully set forth, and all of which defendants are citizens, residents and inhabitants of the State of Oklahoma in the Eastern District thereof, except the defendants S. W. Stone and John Hayes, who reside in the Western District thereof, and complaining of the said defendants and each of them, your complaint says:

I.

That your orator is engaged in business as a dealer in alcoholic and intoxicating liquors, and has its office and place of business in the city of Gainesville, in the State of Texas, and has built up and enjoys a large and lucrative business in the sale of said liquors in the State of Texas, and a part of its business consists, in a large part, of the sale of liquors in the State of Texas to customers residing outside the State of Texas, including customers residing in the State of Oklahoma. That its principal method and custom of making shipments into other states, including the State of Oklahoma, is to receive mail orders for said shipments direct from its customers outside the state for sales and shipments of liquors to be made in Texas into said state, and after said orders are accepted by your orator to deliver said liquors to various railroad companies and other common carriers transporting freight from said State of Texas to such other state for hire for transportation from said shipping point, to-wit: Gainesville, Texas, to the various points in the State of Oklahoma, where said customers reside, the said common carriers agreeing to transport said liquors by interstate shipment from Gainesville in said state of Texas, to said points in Oklahoma, and there to deliver to said customers in Oklahoma the said liquors; and in all cases where said liquors are shipped as aforesaid from said point in Texas to Oklahoma said sales are made outside the state of Oklahoma and delivered to the consignees in the state of Oklahoma by the carrier, as aforesaid.

Your orator further shows that its custom is after delivering said liquors to said carrier for shipment as aforesaid in said State of Texas to Oklahoma to receive from the carrier a bill of lading, which bill of lading is generally made out in the following form, substantially, and forward said bill of lading to the purchaser, the said bill of lading being in substance about as follows:

“Received from in apparent good order, the following orders marked to be delivered in

like good order. Gainesville, Texas,by
 Railway. To shippers order. Notify.....
 Marks..... No. Article.....
 Freight prepaid." the railway company or other common
 carrier filling in the blanks so as to agree with the dates,
 name of purchaser, character of goods, and the name of the
 consignee to be notified and the point in the state of des-
 tination named in the bill of lading, and that the custom and
 understanding between the parties in said transaction is
 that it gives to the shipper the right to stop said goods at
 any time before said goods are delivered to the purchaser at
 their destination in Oklahoma, and before the surrender of
 the bill of lading and the goods are not delivered to said
 purchaser or consignee until they arrive at their destination
 and are not delivered to the consignees until the production
 and surrender of the bill of lading and the payment of the
 draft for the purchase price which is attached to said bill
 of lading by complainant at the time that the same is sent
 forward to some bank for the purpose of being delivered to
 the purchaser at the destination of said liquors upon the
 payment of said draft by said purchaser.

Your orator further shows that at this time complainant
 has received many orders for intoxicating liquors to be sold
 by it in Texas and shipped by carrier as aforesaid to various
 points in the Eastern District of Oklahoma to be delivered
 there to the consignees in the manner and form hereinbefore
 set out, and the legitimate profits of said orders so received
 by it for shipments to be made as aforesaid into the State of
 Oklahoma and the Eastern District thereof, will be largely
 in excess of two thousand five hundred dollars (\$2,500.00),
 and it has accepted said orders and expects in the proper
 and legitimate exercise of its right to engage in commerce
 with the citizens of Oklahoma, to continue its said business,
 and to earn its said legitimate profits, and to continue to
 accept orders at its office in Gainesville for sales in Texas
 and deliveries in Oklahoma as aforesaid, and that it is not
 participating in any unlawful sale of any intoxicating

liquors in the State of Oklahoma, and is only engaged in its said legitimate business of engaging in interstate commerce, as aforesaid.

II.

Your orator further shows that the defendant Stone is the duly appointed and qualified dispensary agent of the State of Oklahoma, whose duty it is under the law to direct his subordinate agents in the seizure and confiscation of intoxicating liquors kept for any unlawful purposes within said state. That the defendant, John Hays, is the duly appointed and qualified assistant counsel to the governor of the State of Oklahoma. That the defendants Brucker and Hamlin are the duly elected and qualified constables in and for the city of Muskogee, Muskogee County, said state. That the defendant H. F. Newblock is the duly elected and qualified sheriff of Tulsa County, Oklahoma, and that defendant T. A. Maxwell is the duly elected and qualified sheriff of Murray County, said state. That the defendant John L. Wisener is the duly appointed and qualified sheriff of Muskogee County, State of Oklahoma. That the defendants Clark Compton and W. F. Blakemore, are, or claim to be some kind of state enforcement officers and are employed by the defendant Stone in his official capacity as aforesaid, and are acting under and pursuant to the direction, control and supervision of the said defendant Stone, and said defendant Hayes in the commission of the wrongs and trespasses on the property of plaintiff as hereinafter more fully set forth. That defendant Akers is the duly elected and qualified sheriff of Carter County, Oklahoma, and defendant Landrum is the constable in and for Carter County, Oklahoma. That the defendants Stone and Hayes, claiming to be enforcing the provisions of a certain act of the legislature of the State of Oklahoma, known as the Billups Bill, and otherwise known as the Enforcement Act, which alleged bill has for its object, or claims to have for its object, the prohibition and prevention of the bartering, selling or giving away of intoxicating liquors in the State of Oklahoma.

and the enforcement of said law, have instructed the other defendants herein, and many other and numerous parties unknown to this complainant, that all liquor shipments made by this complainant in the manner and form hereinbefore set forth are illegal and in violation of said enforcement act, and that said alleged act of the Oklahoma Legislature prohibiting the bartering, selling and giving away of said intoxicating liquors applied to and includes within its provisions all shipments of liquors which are known as interstate shipments while the same are still in the hands of the carrier for transportation and delivery before the surrender of the bill of lading and delivery to the consignees, and which are made in the manner and form hereinbefore set out; and said Stone and Hayes and their other agents, acting under their instructions, directions and orders, have ordered, authorized and directed said Compton and Blake-more and Ramsey, Wisener, Brucker, Akers and Landrum, Newblock and Maxwell and numerous other parties whose names are unknown to complainant, to seize and confiscate and appropriate to their own use and to the use of the State of Oklahoma, all liquors so shipped by complainant in the manner and form hereinbefore set out while the same are in the hands of the railway companies in the State of Oklahoma and before delivery to the consignees as aforesaid, and while in the course of transportation as aforesaid, whereby it is their purpose and intention, and the purpose and intention of each of them, to deprive complainant of the value and possession of said goods which they intend to ship as aforesaid, and prevent complainants from engaging in the business of making interstate shipments in the State of Oklahoma, as hereinbefore described.

III.

That heretofore upon divers dates and occasions during the fall of 1909, complainant, pursuing its said method of doing business aforesaid, and following its right to engage in legitimate interstate commerce with citizens of Oklahoma,

did ship from the State of Texas to many persons residing within the State of Oklahoma at various points therein, and especially at Oklahoma City, certain intoxicating liquors aggregating in value over two thousand dollars (\$2000.00.) That said shipments were made upon orders received and accepted in Texas, and the liquors were sold in Texas and delivered in said State of Texas to various railroad companies and other carriers for transportation and delivery to said points in Oklahoma in the Western District thereof, and while said liquors which were so intended for delivery were in the course of transportation and in the hands of carriers in said Oklahoma City before consummation of interstate shipment, and before delivery to consignees, certain parties claiming to be enforcement officers of the State of Oklahoma, acting under the immediate direction and control of the defendants Stone and Hayes, or claiming to act under their directions, and which said acts were subsequently ratified by the said defendants Stone and Hayes and approved by them, did seize said liquors under certain search warrants issued out of the court of a certain Justice of the Peace, to-wit: One William H. Zwick, and did undertake to confiscate said liquors while the same were such interstate shipments, and by force of arms deprived the said carriers who were in possession of said liquors of the possession thereof; and the said Stone and Hayes did publicly assert their intention, and do publicly assert their intention to continue to advise and instruct their agents and employees, and especially the other defendants named herein as enforcement officers, to continue to seize and confiscate all liquors which this complainant may hereafter make, while the same are in the hands of the common carriers and shipped in the manner and form hereinbefore set out, and while the same constitute a part of an interstate shipment of liquors. And your complainant further shows that the other defendants herein, to-wit: Clark Compton and W. F. Blakeman, are threatening to advise and instruct the defendants, J. M. Brucker and Grant Hamlin, as undersheriffs

and W. E. Landrum as constable, and Akers as sheriff and Wisener and Newblock and Maxwell as sheriffs, to continue to seize any and all liquors which may be shipped into the Eastern District of Oklahoma in the manner and form hereinbefore set out, and said defendants are asserting their intention to make such seizures, and that unless restrained by this court all of the said defendants will continue to seize and confiscate any and all liquors which may be shipped by complainant in the manner and form hereinbefore set out, and will necessitate a multiplicity of suits upon the part of this complainant, and great expense and outlay of money, which course of conduct, unless restrained, will utterly deprive complainant of the privilege of carrying on its business of interstate commerce, to its irreparable loss and injury; and that unless restrained by this court the defendants will continue to make said unlawful seizures of interstate commerce shipments to be made by complainant according to their asserted intention, and will thereby defeat this complainant of its constitutional right guaranteed to it under the laws and constitution of the United States of America to engage in interstate commerce between the states.

IV.

Your orator further shows that it has no adequate remedy at law for such threatened and contemplated seizures because under the laws of Oklahoma replevin will not lie for goods seized under search warrants, and if this complainant should undertake to contest each and every search warrant out of which it seized should issue, it would necessitate a continued course of litigation, as hereinbefore set out.

V.

Your orator further shows that the alleged and pretended search warrants under which the defendants have been seizing and confiscating the property of this complainant as hereinbefore described, and the pretended search warrants

they are contemplating seizing the shipments to be hereafter made under, are issued under the provisions of a certain act of the legislature of the State of Oklahoma known as the Billups Bill, but that none of the provisions of said Billups Bill have any application to interstate commerce shipments such as are being made by this complainant, and as it contemplates making hereafter, but that said Billups Bill, insofar as the same is applied or intended to apply to interstate commerce shipments, is unconstitutional, void, and of no effect.

VI.

Your orator further shows that it is claimed by the defendants that all intoxicating liquors found in the State of Oklahoma which have been shipped by complainant in the manner and form hereinbefore set out, and even though still in the course of transportation and part of interstate commerce shipments, are subject to seizure and confiscation under the laws of Oklahoma, and said pretended seizures are made under and by virtue of said claim.

The premises considered, complainant prays that the defendants, S. W. Stone, dispensary agent, and John Hayes, be enjoined and restrained from further advising, aiding, abetting, encouraging or instructing any of the other defendants herein, or any other person or persons under their control or within their employ, or within the employ of the State of Oklahoma, that it is illegal to make shipments of alcoholic liquors into the State of Oklahoma in the manner and form heretofore referred to, and that they be enjoined and restrained from advising, aiding or abetting, encouraging or instructing any of the other defendants herein, or any person or persons in their employ, or in the employ of the State of Oklahoma, to seize any shipments that may now be in the hands of any common carrier, either in the Eastern District of Oklahoma or any other point in the State of Oklahoma which may have been shipped in the manner and form hereinbefore set out, and are still in the hands of said

carriers for transportation and delivery to consignees, and which said shipments have been made by this complainant in the manner and form hereinbefore set out.

Complainant further prays that the defendants Clark Compton, W. F. Blakemore, John Wisener, J. M. Brucker, Grant Hamlin, Holmes Akers and W. E. Landrum and T. A. Maxwell and H. F. Newblock and all persons acting under their authority or control, be enjoined and restrained from seizing any shipments or parts of shipments of intoxicating liquors which have been shipped by this complainant to consignees in the State of Oklahoma in the manner and form hereinbefore set out while the same are in the hands of such carriers for transportation and before delivery to the consignees and surrender of the bill of lading and while said shipments are interstate shipments. That upon the final hearing of this cause the injunction herein prayed for may be made perpetual, and for such other and further and general relief as to your Honors may seem meet and just in the premises. And your orator further prays to grant unto your orator a writ of subpoena issued out of and under the seal of this honorable court, to be directed to the said S. W. Stone, dispensary agent, John Hayes, assistant counsel to the governor, John Wisener, sheriff of Muskogee County, J. M. Brucker and Grant Hamlin, deputy sheriffs of Muskogee County, Oklahoma, Holmes Akers, sheriff of Carter County, Oklahoma, W. E. Landrum, constable in and for Carter County, Oklahoma, and to said pretended enforcement officers, Clark Compton and W. F. Blakemore, and to said Maxwell as sheriff and Newblock as sheriff, commanding them on a certain day and date under a certain penalty, in said writ personally to be and appear before your honors and this honorable court, and then and there a full, true and perfect answer make to all and every premises, and further to abide, stand by, and perform all orders made by this honorable court, and that in the meantime a temporary restraining order restraining and enjoining these defendants and each of them until the further order of this

court from performing any and all of the acts hereinbefore set out. Your orator further prays that this bill may be amended from time to time by adding the names of such parties thereto as causes therefor may arise, and the said parties are engaged with the other parties herein in assaults upon the property of this complainant in the manner hereinbefore set forth. And your orator will forever pray in the premises.

GIDDINGS & GIDDINGS,
O. H. HALEY Co.,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
STATE OF TEXAS.

O. F. Haley, being duly sworn, deposes and says that he is president of the complainant, The O. F. Haley Company, a corporation; that he has read the within and foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

O. F. HALEY.

Subscribed and sworn to before me this 23rd day of December, 1909.

R. W. BURRAGE,
Notary Public in and for Cooke County, Texas.

My commission expires June, 1911.

(SEAL)

Filed Dec. 24, 1909.

L. G. DISNEY,
Clerk U. S. Circuit Court, Eastern Dist. Okla.

On December 28 there was issued the following restraining order:

UNITED STATES OF AMERICA,
STATE OF OKLAHOMA.

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR THE EASTERN DISTRICT OF OKLAHOMA.

IN EQUITY.

No. 1242.

THE O. F. HALEY COMPANY,
A Corporation,
Complainant,

vs.

S. W. STONE, State Dispensary Agent, JOHN HAYES,
Assistant Counsel of the Governor, CLARK COMPTON,
W. F. BLAKEMORE, JOHN L. WISENER, Sheriff, J.
M. BRUCKER and GRANT HAMLIN, HOLMES AKERS
and W. E. LANDRUM, T. A. MAXWELL, and H. F.
NEUBLOCK,

Defendants.

RESTRAINING ORDER.

Whereas, in the above named cause it has been made to appear upon the bill of complaint filed herein, duly sworn to, that writ of injunction preliminary to the final hearing is proper and that prima facie the complainant is entitled thereto, enjoining the defendants S. W. Stone, John Hayes, Clark Compton, W. F. Blakemore, John L. Wisener, Sheriff of Muskogee County, Oklahoma, J. M. Brucker, Grant Hamlin, Holmes Akers and W. E. Landrum, from the acts complained of and threatened to be committed, and H. F. Newblock, Sheriff of Tulsa County, Oklahoma, and T. A. Maxwell, Sheriff of Murray County, Oklahoma.

Now, on motion of the said complainant, it is ordered that the defendants herein appear before the Circuit Court of the United States for the Eastern District of Oklahoma, at the court room of said court at Muskogee, Oklahoma, on the 6th day of January, 1910, at 10 o'clock A. M. of said day, and then and there show cause, if any they have, why the preliminary injunction therein prayed for should not issue, and it appearing to THE undersigned District Judge of said United States Circuit Court, that there is danger of irreparable injury being caused to the complainant before the hearing of said application for the preliminary writ of in-

junction can be heard, unless the said defendants, Stone, Hayes, Compton, Blakemore, Maxwell, and Newblock, Wisener, Brucker, Hamlin, Akers and Landrum are, pending such hearing, restrained as hereinafter set forth.

Therefore, complainant's application for such restraining order is granted upon its giving bond with two good and sufficient sureties to be approved by the clerk of this court, in the penal sum of One Thousand Dollars (\$1,000.00), securing the said defendants so restrained against all loss or damages which may result from the issue of said order, if it should be finally determined that the same was improperly issued, or that may be awarded to them by reason of the granting of said order.

Now, therefore, it is ordered that you, S. W. Stone, John Hayes, Clark Compton, W. F. Blakemore, John L. Wisener, Sheriff, J. M. Brucker, Grant Hamlin, Holmes Akers, Sheriff, and W. E. Landrum, H. F. Newblock and T. A. Maxwell, and your agents and servants and all persons acting by or under your authority and directions be and you are hereby restrained and enjoined from seizing or causing to be seized, any intoxicating liquors which have been shipped or may hereafter be shipped from the State of Texas by the complainant to purchasers in the Eastern District of Oklahoma while the same are in the possession of the carriers in course of transportation and before the delivery to the consignees and while said shipments are interstate shipments, until the further order of this court.

It is further ordered that a copy of this order, certified under the hand of the clerk and the seal of this court be served on each of the defendants herein.

Dated at Muskogee, Oklahoma, in the Eastern District of Oklahoma, this 28th day of December, 1909.

RALPH E. CAMPBELL,

Judge.

Filed Jan. 8, 1910.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern Dist, Okla.

On January 6th, 1910, the respondents filed in said cause the following demurrer:

UNITED STATES OF AMERICA,
STATE OF OKLAHOMA,
EASTERN DISTRICT.

ss:

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR SAID DISTRICT.

IN EQUITY.

No.

THE O. F. HALEY COMPANY,

A Corporation,

Complainant.

vs.

S. W. STONE, State Dispensary Agent, JOHN HAYS, Assistant Counsel of the Governor, CLARK COMPTON, W. F. BLAKEMORE, JOHN L. WISENER, Sheriff, J. M. BRUCKER and GRANT HAMLIN, HOLMES AKERS, W. E. LANDRUM, T. A. MAXWELL and H. F. NEWBLOCK,

Defendants.

DEMURRER FOR LACK OF JURISDICTION AND
EQUITY.

These respondents, S. W. Stone, John Hays, Clark Compton, W. F. Blakemore, John L. Wisener, Sheriff, J. M. Brucker, Grant Hamlin, Holmes Akers, W. E. Landrum, T. A. Maxwell and H. F. Newblock, by protestation, not confessing or acknowledging all, or any, of the matters or things in the said bill of complaint contained, to be true, in such manner as the same are therein set forth and alleged, demur to the said bill; and for cause of demurrer show:

I.

That it appears by the complainant's own showing by the

said bill that they are not entitled to the relief prayed by said bill against these respondents, or any of them.

II.

That it appears from said complainants' bill of complaint that their business operations which they seek to have protected by decree of this Honorable Court, are carried on and conducted in direct violation of the penal laws of the United States of America, to-wit, in violation of sections 238, 239 and 240 of an Act of Congress of March 4th, 1909. (35 Stat. L. 1136-7.)

III.

That it appears from complainants' said bill of complaint that this Court has no jurisdiction to hear and determine this action, and that the relief prayed for is sought in direct violation of the Eleventh Amendment to the Constitution of the United States, and of Section 720 of the Revised Statutes of the United States.

IV.

That complainants' said bill of complaint is wholly without equity.

WHEREFORE, and for divers other good causes of demurrer in said bill, these respondents demur thereto, and they and each of them pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to complainants' said bill; and they and each of them humbly pray to be hence dismissed with their reasonable costs in their half sustained.

FRED S. CALDWELL,
Solicitor for Respondents.

VERIFICATION.

STATE OF OKLAHOMA,
COUNTY OF.....

ss:

Fred S. Caldwell, being first duly sworn, on oath says:
That he is the solicitor for the respondents to the foregoing

demurrer in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point of law; and on behalf of said respondents, and each of them, says, that the same is not interposed for delay.

FRED S. CALDWELL,

Subscribed and sworn to before me this 6th day of January, 1910.

L. G. DISNEY, *Clerk.*

By OTIS LORTON, *Deputy.*

(SEAL.)

My commission expires.....

Filed Jan. 6, 1910.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern District Okla.

On January 6th, 1910, the respondents in said cause filed their written objections to the issuance of temporary injunction as follows:

UNITED STATES OF AMERICA,

STATE OF OKLAHOMA,

EASTERN DISTRICT.

ss.

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR SAID DISTRICT.

No. 1242.

THE O. F. HALEY CO., a Corporation, *Complainant,*

vs.

S. W. STONE, et al., *Defendants.*

OBJECTION TO THE ISSUANCE OF A TEMPORARY
INJUNCTION.

Come now the respondents herein, S. W. Stone, John Hays, Clark Compton, W. F. Blakemore, John L. Wisener, Sheriff, J. M. Brucker, Grant Hamlin, Holmes Akers, W. E. Landrum, T. A. Maxwell and H. F. Newblock and object to the issuance of a temporary injunction, pursuant to the ap-

plication and prayer of complainant for the following reasons:

I.

That it appears by the complainants' own showing by the said bill that they are not entitled to the relief prayed by said bill against these respondents, or any of them.

II.

That it appears from said complainants' bill of complaint that their business operations which they seek to have protected by decree of this Honorable Court, are carried on and conducted in direct violation of the penal laws of the United States of America, to-wit, in violation of sections 238, 239 and 240 of an Act of Congress of March 4th, 1909. (35 Stat. L. 1136-7.)

III.

That it appears from complainants' said bill of complaint that this court has no jurisdiction to hear and determine this action, and that the relief prayed for it sought in direct violation of the Eleventh Amendment to the Constitution of the United States, and of Section 720 of the Revised Statutes of the United States.

IV.

That complainants' said bill of complaint is wholly without equity.

WHEREFORE, and for divers other good causes, these respondents and each of them, pray the judgment of this Honorable Court denying and refusing the issuance of a temporary injunction herein, as prayed for by complainant.

FRED S. CALDWELL,

Solicitor for Respondents.

Filed Jan. 6, 1910.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern Dist. Okla.

On February 7th, 1910, the following order was entered
overruling respondents' demurrer:

UNITED STATES OF AMERICA,

STATE OF OKLAHOMA,

EASTERN DISTRICT.

ss.

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR SAID DISTRICT.

No. 1242.

THE O. F. HALEY COMPANY, a Corporation, *Complain-
ant*,

vs.

S. W. STONE, State Dispensary Agent, JOHN HAYS,
Assistant Counsel of the Governor, CLARK COMPTON,
W. F. BLAKEMORE, JOHN L. WISENER, Sheriff, J.
M. BRUCKER and GRANT HAMLIN, HOLMES
AKERS, W. E. LANDRUM, T. A. MAXWELL, and H.
F. NEWBLOCK, *Defendants*.

ORDER OVERRULING RESPONDENTS' DEMURRER.

The above entitled cause came on for hearing before
the Court upon the respondents' demurrer to complainants'
bill on Monday, the 7th day of February, A. D. 1910, pur-
suant to a further order of this Court and an agreement of
the parties hereto made and announced in open Court.

Whereupon the Court, having been fully advised in the
premises, finds that said demurrer is not well taken and
should be overruled.

Wherefore, it is hereby ordered that respondents' said
demurrer to complainants' bill be, and the same hereby
is in all things overruled, to which order and ruling of the
Court, said respondents, and each of them, then and there
duly excepted and still except on the ground that said
order and decree is contrary to law in that complainants'
bill does not state facts sufficient to constitute a cause of
action against defendants, or any of them, and that said
order and decree is in violation of the Eleventh Amend-
ment to the Constitution of the United States, and is in
violation of Sections 238, 239 and 240 of the United States

Penal Code, the same being Act of Congress of March 4th, 1909, 35 Stat. L. 1136-7.

It is hereby further ordered that respondents, and each of them, shall have until the March, 1910, rule day within which to make answer to complainants' bill of complaint.

RALPH E. CAMPBELL.

Attest:

.....
Filed in open court Feb. 7, 1910. L. G. DISNEY,
Clerk U. S. Circuit Court, Eastern Dist. Okla.

On January 17th, 1910, there was filed in the U. S. Circuit Court the following bill:

IN THE UNITED STATES CIRCUIT COURT, IN AND FOR THE
EASTERN DISTRICT OF THE STATE OF OKLAHOMA.
FEHRENBACH WINE & LIQUOR COMPANY, A Corporation, *Plaintiff*.

vs.

S. W. STONE, State Dispensary Agent, *et al.*, *defendants*.

BILL IN EQUITY.

To the Honorable Judge of the Circuit Court of the United States in and for the Eastern District of the State of Oklahoma, in Chancery Sitting:

The Fehrenbach Wine & Liquor Company, a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, having capacity to sue and liable to be sued as such, with its place of business located in the City of Joplin, County of Jasper and State of Missouri, brings this its Bill of Complaint against defendants S. W. Stone and John Hayes, who are residents of the Western District of the State of Oklahoma, and the defendants John L. Wise, John G. Juergen, Hiram Stephens, John T. Hukill, John L. Bird, H. E. Ridenour, H. F. Block, W. D. Vancil Harry G. Stein, and..... all citizens of the said State of Oklahoma and inhabitants of the said Eastern District of Oklahoma.

And thereupon your orator says that the said S. W. Stone is the State Dispensary Agent, within and for the State of Oklahoma, appointed by virtue and authority of Chapter Forty-five of the General Statutes of Oklahoma known as the Billups Bill; that the defendant John Hays is assistant counsel to the Governor of the State of Oklahoma, appointed by the Governor under and by virtue of the said Billups Bill to aid and assist the said State Dispensary agent in enforcing said Billups Bill; that the defendant John L. Wise is the Sheriff of Muskogee County, and defendant John G. Juergen is the Sheriff of Washington County, and defendant Hiram Stephens is the Sheriff of Rogers County, and the defendant John T. Hukill is the Sheriff of Ottawa County, and the defendant John L. Bird is the Sheriff of Osage County, and the defendant H. E. Ridenour is the Sheriff of Craig County, and the defendant H. F. Newblock is the Sheriff of Tulsa County, and the defendant W. D. Vancil is the Sheriff of Okmulgee County, and the defendant Harry G. Stein is the Sheriff of Creek County, and defendant..... is the Sheriff of Wagoner County.

And your orator further represents and shows that it is engaged in the business of selling intoxicating liquors, including wine, beer, brandy and whiskey, in the aforesaid city of Joplin, State of Missouri, as wholesale dealer; that they have been engaged in said business for some time in said city and state; that it has a large number of customers in the State of Oklahoma and more particularly in the Eastern District of said State of Oklahoma who purchase of and from your petitioner at its place of business in the city of Joplin and state of Missouri, intoxicating liquors in wholesale quantities.

Your orator further represents that the goods thus sold to their customers in the said Eastern District of the State of Oklahoma are transported to said customers by freight by various railway companies engaged in the business of common carriers for hire between the State of Mis-

souri and State of Oklahoma; that said liquors are shipped to said customers in the manner known as shipper's orders, that is to say, upon the delivery of the same to the railway companies for shipment, your orator receives from the railway company to which said liquors are delivered for shipment a Bill of Lading in the following form:

" Consigned to ORDER OF FEHRENBACH

WINE AND LIQUOR CO.

Destination,..... State of.....County of..... Notify.....

At.....State of.....County of.....

Route..... Car Initial..... Car Number.....

No. Packages	Description of Articles and Special Marks	Weight Subject to Corrections	Class or Rate	Check Column

FEHRENBACH WINE & LIQUOR CO., Shippers

Per.....

.....Agent

Per....."

That upon the receipt of said Bill of Lading your petitioner sends the same with a draft attached, for the amount of the purchase price of said liquor, upon the consignee of said liquors to a bank in the town or city where said liquors are shipped, with instructions to deliver said Bill of Lading to the consignee of said liquors upon his payment of the draft attached. That by reason of said sales of liquor as aforesaid and the shipment thereof in the manner aforesaid from the State of Missouri to your petitioner's customers in the said State of Oklahoma your petitioner is and was at all the time herein mentioned engaged in interstate commerce between said states.

Your orator further represents and shows that in conducting and operating their said business of wholesale

liquor dealers in the City of Joplin in the State of Missouri they have previous to the time of filing this petition received at their office or place of business in the City of Joplin, State of Missouri, a large number of orders for liquors from customers located in said Eastern District of said State of Oklahoma; that the profit on the orders of liquors thus received and which your petitioner will continue to receive if unmolested in its business of a wholesale liquor dealer and permitted to continue to make sales in said City of Joplin, Missouri, to its customers in the said Eastern District of the State of Oklahoma in the manner as aforesaid will exceed in value the sum of Twenty-Five Hundred Dollars.

Your orator further represents and shows that on or about the.....day of November, 1909, they had received at their place of business in the said City of Joplin, Missouri, a large number of orders for liquors from their customers in the said Eastern District of Oklahoma; that on or about said date they attempted to fill said orders, as they had a legal right to do, and for that purpose placed in the custody of the St. Louis & San Francisco Railway Company, a railway corporation engaged in the business of common carrier between the said State of Oklahoma and State of Missouri, to be transported by said Railway Company from the said City of Joplin to various customers of your petitioner located at various places in the said Eastern District of the State of Oklahoma, and for that same purpose a large amount of liquors were delivered to the Missouri, Kansas & Texas Railway Company, a railway company engaged in the business of common carrier between the said State of Missouri, and State of Oklahoma, to be delivered to customers of your petitioner at various places in the said Eastern District of the State of Oklahoma, all of said liquors being shipped to shipper's order with Bill of Lading in the form as above set forth. That after the arrival of said liquors at the railway depot to which the same were shipped, and before the Bills of

Lading therefor had been delivered to the consignee, the defendant, S. W. Stone, said State Dispensary Agent, and defendant, John Hays, Assistant Counsel to the Governor caused search and seizure warrants to be issued by the District and County Courts of the various counties of the Eastern District of the State of Oklahoma for the purpose of searching the railway depots in the various towns and cities in said counties for the purpose of ascertaining whether or not said depots contained therein any intoxicating liquors; that under and by virtue of said warrants the said defendants, together with the aid and assistance of the sheriff in each of the respective counties in said district seized a large amount of liquors that had been shipped by this petitioner in the manner and form aforesaid from the said State of Missouri to the said State of Oklahoma; a correct and itemized schedule of all of said liquors thus seized and the counties and depots from which the same was seized being particularly set forth in a schedule hereto attached and marked Exhibit A.

Your orator further represents and shows that said warrant was issued under and by virtue of the aforesaid Chapter of the General Statutes of Oklahoma, 1908, known as the Billups Act; that said liquors were seized by said defendants for the purpose of confiscation in the manner and form provided for in said act; that the said defendants S. W. Stone and John Hays are threatening to seize and cause to be seized by the respective sheriffs of the counties composing the Eastern District of the State of Oklahoma all intoxicating liquors that may be shipped by this petitioner to said customers in the said State of Oklahoma in the manner aforesaid as soon as the same arrives at the depot to which the same is shipped, and before the Bill of Lading is delivered to the consignee.

Your orator further represents and shows that the said defendants S. W. Stone and John Hays are proceeding to have the liquors seized as aforesaid confiscated as provided by said Billups Act and without giving any notice

of any kind or character to this petitioner of said proceeding, thus depriving your petitioner of its property without due process of law; that said Billups Bill does not provide for any notice to be given to the owners of liquors of the time or place of the trial to determine whether or not intoxicating liquors seized under search and seizure warrants, and for that reason is in violation of the Fourteenth Amendment to the Constitution of the United States in that it provides for the taking and depriving persons of their property without due process of law. That said defendants are threatening to seize and cause to be seized all liquors shipped by said petitioner in the manner and form aforesaid and to have the same confiscated without any notice whatever to your petitioner, all of said acts violating the Fourteenth Amendment of the Constitution of the United States.

Your orator further represents that the said Chapter of the General Statutes of the State of Oklahoma, 1908, known as the Billups Act in so far as the same permits or authorizes the said agents and officers of said state to seize intoxicating liquors which have been shipped from another state to the said State of Oklahoma, and before the same have been delivered by the transportation companies to the consignee thereof, is unconstitutional and void in that it is an attempt to interfere with and regulate interstate commerce, and to deprive your petitioner of the right given it by the Constitution of the United States to engage in interstate commerce subject alone to be regulated by laws duly enacted by the Congress of the United States.

Your orator further represents and shows that it has no adequate remedy at law for the reason that said officers are attempting and threatening to have said intoxicating liquors confiscated to the State of Oklahoma upon a trial without any notice of any kind or character to this petitioner; that if any notice were provided by law and were given to this petitioner of the time and place of the trial to determine whether or not said liquors should be

confiscated, that your petitioner would be compelled to continually appear and defend a large number of actions at various times and various places in the said State of Oklahoma; that the annoyance, trouble and expense, and the time lost by your petitioner in the defense of said actions would far exceed the value of the intoxicating liquors seized as aforesaid; that the relief herein sought should be granted in order to prevent and save your petitioner the trouble and expense of defending in a multiplicity of suits.

Your orator further represents that he is without any adequate remedy at law in the premises for the further reason that the laws of the State of Oklahoma provide that liquors that have been seized by the state officials in the manner aforesaid cannot be replevined by the owners thereof or by any other person interested therein.

In consideration wherefore, and because your orator is remediless in the premises by reasons of the statutes of said State of Oklahoma, and cannot have adequate relief save in a court of equity where matters of this nature are properly cognizable, and to the end that the said defendants, S. W. Stone, John Hays, John L. Wise, John G. Juer-gen, Hiram Stephens, John T. Hukill, John L. Bird, H. E. Ridenour, H. F. Newblock, W. D. Vancil, Harry G. Stein, andmay answer, all and singular, the matters and things hereinbefore set forth and complained of, and that the said S. W. Stone, State Dispensary Agent, and John Hays, Assistant Council to the Governor, be forever restrained by injunction, as well perpetually as during the pendency of this suit, for interfering in any way with shipments of intoxicating liquors made by your petitioner in the manner and form aforesaid, and that they be restrained from confiscating the liquors that they have heretofore seized and set forth in schedule A hereto attached; that they be ordered and directed by this Court to return all of said liquors seized in the manner aforesaid to this petitioner or to the railway depots from which the same were taken by said defendants and that they be restrained

from ordering and directing the defendants, John L. Wise, John G. Juergen, Hiram Stephens, John T. Hukill, John L. Bird, H. E. Ridenour, H. F. Newblock, W. D. Vancil, Harry G. Stein and.....sheriffs of the different counties of the said Eastern District of said State of Oklahoma from attempting in any way to confiscate any of the intoxicating liquors seized by any of said defendants and set forth in Schedule A and that they be restrained from ordering, directing and assisting said sheriffs from hereafter seizing intoxicating liquors shipped by this petitioner from its said office or place of business in the City of Joplin to its said customers in the said Eastern District of the State of Oklahoma, and that each and all of said defendants be restrained and enjoined from interfering in any way with any shipments of liquor made by your petitioner from its said place of business in the City of Joplin in the State of Missouri, to the said State of Oklahoma, in the manner aforesaid while the same is in the possession of the transportation company, either in transit or at their depot, to which the same was shipped and before said liquor or the Bill of Lading therefor has been delivered to the consignee thereof; and to pay to your orator its costs and disbursements in this suit; and that your orator may have such further relief in the premises as to this Honorable Court may seem meet and equitable, and as the nature and circumstances of the case may require; and that your orator may be permitted from time to time to amend this petition by the addition of other parties defendant who are attempting to interfere or who shall hereafter attempt to interfere in any manner whatever with the shipments of intoxicating liquors made by your orator in the manner aforesaid.

Your orator further represents and shows that the said defendants, S. W. Stone, State Dispensary Agent, and John Hays, Assistant Counsel to the Governor, are about to cause all of said liquors to be shipped to the City of Guthrie, state of Oklahoma, and there to be distributed among the various dispensary districts of said state of Oklahoma or to be

destroyed as provided in said Billups Bill, and that unless they be immediately enjoined and restrained from so doing that they will have thus disposed of said intoxicating liquors and have placed them beyond the jurisdiction of this Court and that irreparable injury will thereby be done your orator and for which he will have no adequate remedy at law.

WHEREFORE, your orator, prays this Honorable Court to grant a temporary restraining order, restraining the said defendants S. W. Stone and John Hays, from destroying or disposing of any of said liquors seized as aforesaid pending the hearing for a permanent injunction herein.

May it please Your Honor such relief fully to direct and order, the same as if the relief which equity demands were made the subject of a specific prayer or prayers; and may it please Your Honor to grant unto your orator a writ of subpoena according to the course of the Courts of equity directed to the said S. W. Stone, John Hayes, John L. Wise, John J. Juergen, Hiram Stephens, John T. Hukill, John L. Bird, H. E. Ridenour, H. F. Newblock, W. D. Vanceil, Harry G. Stein andcommanding them personally to be and appear before this Honorable Court then and there to answer the premises and to stand to and abide by such order and decree therein as to this Honorable Court may seem agreeable to equity and good conscience, and your orator, as in duty bound will ever pray.

FEHRENBACH WINE & LIQUOR COMPANY.

R. M. SHEPPARD,

Solicitor for Complainant.

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF OKLAHOMA.
COUNTY OF MUSKOGEE,
STATE OF OKLAHOMA.

O. H. Baldwin, being duly sworn, says that he is the Secretary of the Fehrenbach Wine & Liquor Company, the com-

plainant named in the foregoing Bill of Complaint; that he makes this affidavit on behalf of said complainant; that he has seen and read the said Bill and knows the contents thereof; that as to the statements contained in said Bill which are within his knowledge, that they are true, and as to the statements derived from the information of others, he verily believes them to be true.

O. H. BALDWIN,

Subscribed and sworn to before me this 17th day of January A. D., 1910.

L. G. DISNEY,

Clerk of the Circuit Court of the Eastern District of the State of Oklahoma.

By OTIS LORTON, D. C.

SEAL.

EXHIBIT A.

Schedule of Liquors shipped and seized:

To Bartlesville, County of Washington, State of Oklahoma, on the 10th day of December, 1909, two cases of whiskey, via Missouri, Kansas & Texas Railway Company, Bill of Lading marked "Notify Eug. Theys."

To Bartlesville, County of Washington, State of Oklahoma, on the 10th day of December, 1909, two cases of whiskey, via Missouri, Kansas & Texas Railway Company, Bill of Lading marked "Notify Eug. Theys."

To Bartlesville, County of Washington, State of Oklahoma, on the 17th day of December, 1909, one keg of whiskey, via Missouri, Kansas & Texas Railway Company, Bill of Lading marked, "Notify Dan Fanning."

To Bartlesville, County of Washington, State of Oklahoma, on the 23rd day of December, 1909, one keg of whiskey, via Missouri, Kansas & Texas Railway Company, Bill of Lading marked "Notify J. W. Grubb."

To Bartlesville, County of Washington, State of Oklahoma, on the 15th day of December, 1909, two cases whiskey, via Missouri, Kansas & Texas Railway Com-

pany, Bill of Lading marked, "Notify Charl Robertson."

To Bartlesville, County of Washington, State of Oklahoma, on the 17th day of December, 1909, two cases of whiskey, via Missouri, Kansas & Texas Railway Company, Bill of Lading marked, "Notify E. Theys."

To Bartlesville, County of Washington, State of Oklahoma, on the 17th day of December, 1909, one case of whiskey via Missouri, Kansas & Texas Railway Company, Bill of Lading marked, "Notify E. Theys."

To Bartlesville, County of Washington, State of Oklahoma, on the 14th day of December, 1909, two cases of whiskey, via Missouri, Kansas & Texas Railway Company, Bill of Lading marked, "Notify Pearl Pruitt."

To Bartlesville, County of Washington, State of Oklahoma, on the 14th day of December, 1909, two cases of whiskey, via. Missouri, Kansas & Texas Railway Company, Bill of Lading marked, "Notify Pearl Pruitt."

To Bartlesville, County of Washington, State of Oklahoma, the 14th day of December, 1909, two cases of whiskey, via. Missouri, Kansas & Texas Railway Company, Bill of Lading marked, "Notify Pearl Pruitt."

To Bartlesville, County of Washington, State of Oklahoma, on the 21st day of December, 1909, two cases of whiskey, via. Missouri, Kansas & Texas Railway Company, Bill of Lading marked, "Notify Tuck Eroin."

To Bartlesville, County of Washington, State of Oklahoma, on the 21st day of December, 1909 two cases of whiskey via. Missouri, Kansas & Texas Railway Company, Bill of Lading marked, "Notify....."

To Bartlesville, County of Washington, State of Oklahoma, on the 21st day of December, 1909 two cases of whiskey via. Missouri, Kansas & Texas Railway Com-

pany, Bill of Lading marked, "Notify....."

To Okmulgee, County of Okmulgee, State of Oklahoma, on the 18th day of December, 1909, three cases of liquor, via. Frisco Railroad Co., Bill of Lading marked, "Notify R. Phillips."

To Okmulgee, County of Okmulgee, State of Oklahoma, on the 13th day of December, 1909, one case of whiskey and one case of gin, via St. Louis & San Francisco Railway Company, Bill of Lading marked "Notify R. Phillips."

To Okmulgee, County of Okmulgee, State of Oklahoma, on the 13th day of December, 1909, five cask H. beer via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify H. Egbert."

To Okmulgee, County of Okmulgee, State of Oklahoma, on the 29th day of November, 1909, two cases of whiskey via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify H. Egbert."

To Okmulgee, County of Okmulgee, State of Oklahoma, on the 29th day of November, 1909, two cases of whiskey via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify H. Egbert."

To Okmulgee, County of Okmulgee, State of Oklahoma, on the 29th day of November, 1909, two cases of whiskey via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify H. Egbert."

To Okmulgee, County of Okmulgee, State of Oklahoma, on the 6th day of December, 1909, two cases of whiskey, via St. Louis & San Francisco Railway Company, Bill of Lading marked "Notify James Williams."

To Okmulgee, County of Okmulgee, State of Oklahoma, on the 6th day of December, 1909, two cases of whiskey, via St. Louis & San Francisco Railway Company, Bill of Lading marked "Notify James Williams."

To Okmulgee, County of Okmulgee, State of Oklahoma, on the 6th day of December, 1909, two cases of

whiskey, via St. Louis & San Francisco Railway Company, Bill of Lading marked "Notify James Williams."

To Tulsa, County of Tulsa, State of Oklahoma, on the 14th day of December, 1909, six cases of whiskey, via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify C. Smith."

To Tulsa, County of Tulsa, State of Oklahoma, on the 15th day of December, 1909, three cases of whiskey, via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify C. Smith."

To Tulsa, County of Tulsa, State of Oklahoma, on the 13th day of December, 1909, six kegs of whiskey, via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify C. Smith."

To Tulsa, County of Tulsa, State of Oklahoma, on the 14th day of December, 1909, four kegs of whiskey, via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify C. Smith."

To O'Kesa, County of Osage, seized at Nelagomy, Osage County, State of Oklahoma, on the 30th day of November, 1909, two cases of whiskey, via Missouri, Kansas & Texas Railway Company, Bill of Lading marked, "Notify S. C. Johnson."

To Collinsville, County of Washington, State of Oklahoma, on the 3rd day of December, 1909, two cases of whiskey, via Missouri, Kansas & Texas Railway Company, Bill of Lading marked, "Notify L. D. Harrison."

To Vinita, County of Craig, State of Oklahoma, on the 11th day of December, 1909, two cases of whiskey, via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify Sam Painter."

To Chelsea, County of Rogers, State of Oklahoma, on the 22nd day of December, 1909, three cases of whiskey, via St. Louis & San Francisco Railway Company, Bill of lading marked, "Notify Fred Coker."

To Chelsea, County of Rogers, State of Oklahoma, on the 10th day of November, 1909, one drum of whiskey, via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify Fred Coker."

To Chelsea, County of Rogers, State of Oklahoma, on the 10th day of November, 1909, one drum of whiskey, via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify Fred Coker."

To Chelsea, County of Rogers, State of Oklahoma, on the 14th day of December, 1909, two cases of whiskey, via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify Fred Coker."

To Chelsea, County of Rogers, State of Oklahoma, on the 16th day of November, 1909, two cases of whiskey, via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify Fred Coker."

To Chelsea, County of Rogers, State of Oklahoma, on the 16th day of November, 1909, two cases of whiskey, via St. Louis & San Francisco Railway Company, Bill of Lading marked, "Notify Fred Coker."

To Skiatook, County of Osage, State of Oklahoma, on the 15th day of December, 1909, four cases of whiskey, via Missouri, Kansas & Texas Railway Company, Bill of Lading marked, "Notify G. H. Perdui."

To Skiatook, County of Osage, State of Oklahoma, on the 15th day of December, 1909, one Kann Alkohol, via Missouri, Kansas & Texas Railway Company, Bill of Lading marked, "Notify G. H. Perdui."

To Skiatook, County of Osage, State of Oklahoma, on the 15th day of December, 1909, one box whiskey, via Missouri, Kansas & Texas Railway Company, Bill of Lading marked, "Notify G. H. Perdui."

To Miami, County of Ottawa, State of Oklahoma, on the 22nd day of December, 1909, three cases of whiskey, via Frisco R. R. Company, Bill of Lading marked "Notify H. Cruise."

To Tulsa, County of Tulsa, State of Oklahoma, on the 16th day of September, 1909, two cases of whiskey and one box of whiskey, via Frisco R. R. Company, Bill of Lading marked, "Notify C. Smith."

To Romona, County of Washington, State of Oklahoma, on the 3rd day of December, 1909, three cases of whiskey, via Missouri, Kansas & Texas R. R. Company, Bill of Lading marked, "Notify Ray Parks."

To Pawhuska, County of Osage, State of Oklahoma, on the 13th day of December, 1909, two boxes of whiskey, via Frisco and Midland Valley Railway Company, Bill of Lading marked, "Notify S. C. Johnson."

Filed January 17, 1910.

L. G. DISNEY,

Clerk of the Circuit Court of the Eastern District of the State of Oklahoma.

On January 24, 1910, an order of temporary injunction was issued in said cause, as follows:

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF OKLAHOMA.

No. 1266.

FEHRENBACH WINE & LIQUOR COMPANY,
a Corporation, *Plaintiff,*

vs.

S. W. STONE, State Dispensary Agent; JOHN HAYS, Assistant Counsel to the Governor, et al., *Defendants.*

Now on this 24th day of January, 1910, this cause coming on to be heard upon the application of the complainant, for a temporary injunction herein and the complainant by its attorney, and it appearing to the Court that the defendants S. W. Stone, State Dispensary Agent and John Hays, assistant counsel to the Governor, have been duly notified that the hearing upon the application of the complainant for a temporary injunction herein was set for a hearing at the United States Court room, at Muskogee, on Monday, the

24th day of January, 1910, at 10 o'clock a. m., and the Court having heard counsel for the complainant defendant not appearing either in person or by counsel, and having seen all the papers and pleadings on file herein and being well and sufficiently advised in the premises and it appearing to the Court that temporary injunction should issue against the defendants herein it is therefore ordered that the defendants, S. W. Stone, State Dispensary Agent, and John Hays, assistant counsel to the Governor, be and they are hereby enjoined and restrained within the Eastern District of Oklahoma from interfering with or seizing or receiving or aiding, abetting, advising or encouraging any other person or persons to interfere with or seize any shipments of whiskey, beer, wine, brandy or other liquors sold by the complainant at its place of business in the city of Joplin, State of Missouri, to its customers in the Eastern District in State of Oklahoma, and shipped to said customers by said complainant from its said place of business in the manner known as shippers orders while the same is in the possession of the transportation company, transporting the same, either in transit or at their depot to which the same may be shipped and before the aforesaid liquor or the bill of lading therefor have been delivered to the consignee thereof, and that the said defendants and each of them be, and they are hereby enjoined from taking any steps looking to the forfeiture of any of the liquor mentioned in the complainant's bill of complaint herein and which was within said Eastern District at the time of filing of this bill herein and having been heretofore seized while in transit or at the depots where the same had been shipped from complainant's place of business in the city of Joplin, State of Missouri, and before the same or the bill of lading therefore had been delivered to the consignee thereof,

This order to be in full force and effect until the further order of this Court upon the filing of a bond by the complainant in the sum of Twenty-five Hundred Dollars to be

approved by the Clerk of this Court, and conditioned to pay all such costs and damages that may accrue to the defendants by reason of the issuance of this order if the same shall be held to have been wrongfully issued.

RALPH E. CAMPBELL,
*Judge of the United States Circuit Court for the Eastern
District of the State of Oklahoma.*
Filed Jan. 28, 1910.

L. G. DISNEY,
Clerk U. S. Circuit Court, Eastern Dist. Okla.

On February 7th, 1910, respondents filed their demurrer in said cause as follows:

UNITED STATES OF AMERICA,

STATE OF OKLAHOMA,

ss.

EASTERN DISTRICT.

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR SAID DISTRICT.

No. 1266.

FEHRENBACH WINE & LIQUOR COMPANY, a Corporation, *Complainant*,

vs.

S. W. STONE, et al., *Respondents*.

DEMURRER FOR LACK OF JURISDICTION AND
EQUITY.

These respondents, S. W. Stone and J. M. Hays, by protestation, not confessing or acknowledging all, or any, of the matters or things in the said bill of complaint contained, to be true, in such manner, as the same are therein set forth and alleged, demur to the said bill; and for cause of demurrer show:

I.

That it appears by the complainant's own showing by the said bill that they are not entitled to the relief prayed by said bill against these respondents, or any of them.

II.

That it appears from said complainant's bill of complaint that their business operations which they seek to have protected by decree of this Honorable Court, are carried on and conducted in direct violation of the penal laws of the United States of America, to-wit: in violation of Sections 238, 239 and 240 of an Act of Congress of March 4th, 1909. (35 Stat. L. 1136-7.)

III.

That it appears from complainant's said bill of complaint that this Court has no jurisdiction to hear and determine this action, and that the relief prayed for is sought in direct violation of the Eleventh Amendment to the Constitution of the United States, and of Section 720 of the Revised Statutes of the United States.

IV.

That complainant's said bill of complaint is wholly without equity.

WHEREFORE, and for divers other good causes of demurrer in said bill, these respondents demur thereto, and they and each of them pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to complainant's said bill; and they and each of them humbly pray to be hence dismissed with their reasonable costs in their half sustained.

FRED S. CALDWELL,
Solicitor for Respondents.

VERIFICATION.

STATE OF OKLAHOMA,

ss.

COUNTY OF LOGAN.

Fred S. Caldwell, being first duly sworn, on oath says: That he is the solicitor for the respondents to the foregoing demurrer in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point

of law; and on behalf of said respondents, and each of them, says, that the same is not interposed for delay.

FRED S. CALDWELL.

Subscribed and sworn to before me this 27th day of January, 1910.

JULIET WRIGHT,
Notary Public.

My Com. Exp. Dec. 19, 1911.

(SEAL)

Filed Feb. 7, 1910.

L. G. DISNEY,

Clerk U. S. Circuit Court, Eastern Dist. Okla.

On January 18th, 1910, there was filed in the U. S. Circuit Court the following bill:

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR THE EASTERN DISTRICT OF THE STATE OF OKLAHOMA.

No. 1267.

BILL IN EQUITY FOR INJUNCTION.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

JOHN M. HAYES, et al., *Defendants.*

To the Honorable Judges of the Circuit Court of the United States Within and for the Eastern District of the State of Oklahoma:

The Missouri, Kansas & Texas Railway Company brings this its bill of complaint against John M. Hayes, John H. Kane, John D. Jordan, John B. Trail, John Wilson, R. S. Duke, J. L. Walker and Pat Fields, and humbly complaining says:

That your orator, Missouri, Kansas & Texas Railway Company is a corporation created, organized and existing under and by virtue of the laws of the State of Kansas, and is a citizen and resident of said State, and that the defendants John H. Kane, John D. Jordan, John B. Trail, John Wilson, R. S. Duke, J. L. Walker and Pat Fields are citizens of the State of Oklahoma, and residents of the Eastern District of the State of Oklahoma, and that the

defendant John M. Hayes is a citizen of the State of Oklahoma, and a resident of the Western District of the State of Oklahoma.

Further complaining, your orator states that it is now and for many years past has been a common carrier of goods for hire, owning and operating lines of railroad in the States of Missouri, Kansas and Oklahoma, and engaged in the transportation of all classes of goods that may be lawfully transported from one State into another as well as from points within the State of Oklahoma to other points within the State of Oklahoma, and to points without the State of Oklahoma, and as such common carrier your orator has built up an extensive and valuable business, and that as such common carrier of goods for hire it becomes your orator's duty to accept for transportation from points without the State of Oklahoma to points within the State of Oklahoma, and from points within the State of Oklahoma to points without the State of Oklahoma, intoxicating liquors of various character, including amongst others, whiskey, beer, wine and brandy, and that your orator cannot lawfully refuse because of its being such common carrier to receive at points without the State of Oklahoma, for shipment to points within the State of Oklahoma, intoxicating liquors, nor can it lawfully refuse to receive such shipments at points within the State of Oklahoma, for shipment to points without the State of Oklahoma, and cannot lawfully refuse to transport such interstate shipments of liquor, and it is so receiving for shipment and and is so transporting in the ordinary course of its business as a common carrier such interstate shipments of liquor from points without the State of Oklahoma to points within the State of Oklahoma, and from points within the State of Oklahoma, to points without the State of Oklahoma; that the volume of such interstate shipments of liquor so tendered to your orator for shipment in the ordinary course of its business as a common carrier is of a

large volume, and the value of such shipments within the six months last past aggregate many thousands of dollars, and that the revenues to your orator upon such shipments have within the six months last past aggregated more than Two Thousand Dollars.

Further complaining, your orator states that when such interstate shipments of liquor are tendered to it for shipment it is required by law to issue its bills of lading therefor, whereby it binds itself to transport said goods from such respective points without this State to such respective points within this State, and from such respective points within this State to such respective points without this State, and to deliver such respective shipments of liquor to the respective consignees at the respective points of destination named in said bills of lading, and that if your orator fails to so deliver said goods in accordance with said bills of lading, your orator becomes liable in damages to the various consignees for the full value of said goods.

Further complaining, your orator states that owing to the large amount of such interstate shipments of liquor that will hereafter be shipped over your orator's line the value of its business in transporting said goods is worth to your orator in the immediate future far in excess of the sum of Two Thousand Dollars.

Further complaining, your orator states that the above named defendants and each of them are interfering with the interstate business of your orator in the handling and transporting and delivery of such interstate shipments of liquor, claiming to act under the authority of an Act of the Legislature of the State of Oklahoma, entitled:

"An Act to establish a State Agency and Local Agencies for the sale of Intoxicating Liquors for certain purposes; and providing for referring the same to the people; prohibiting the manufacture, sale, barter, giving away, or otherwise furnishing of Intoxicating Liquors, except as herein provided; providing

for the appointment of an attorney, and for the enforcement of the provisions of this Act: Making an appropriation and declaring an emergency."

approved March 24, 1909, and that on the 20th day of December, 1909, the defendants, John M. Hayes, John H. Kane, John D. Jordan, John B. Trail and John Wilson, unlawfully and wrongfully entered the depot building of your orator at its station at Bartlesville, in the Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire, and upon which the freight charges had not been paid and bills of lading had not been surrendered and no delivery made by your orator:

25 one-half barrels whiskey consigned from Thixton Millet Dist. Co., Louisville, Ky., to Fred Goodman, Bartlesville, Oklahoma;

2 cases whiskey consigned from Fehrenback D. Co., Joplin, Mo., shippers order notify Eugene Thorp, Bartlesville, Oklahoma;

2 cases whiskey consigned from Fehrenback D. Co., Joplin, Mo., shippers order notify Eugene Thorp, Bartlesville, Oklahoma;

6 cases whiskey consigned from Fehrenback D. Co., Joplin, Mo., shippers order notify Pearl Pruitt, Bartlesville, Oklahoma;

1 box whiskey consigned from Danciger Bros., Kansas City, Mo., shippers order notify W. Gordon, Bartlesville, Oklahoma;

2 casks beer consigned from Royal Brewing Co., Kansas City, Mo., to Sam Ioma, Bartlesville, Oklahoma;

1 barrel liquor consigned from Interstate Mer. Co., Joplin, Mo., shippers order notify S. F. Healer, Bartlesville, Oklahoma;

2 cases liquor consigned from Interstate Mer. Co.,

Joplin, Mo., shippers order notify J. W. Healer, Bartlesville, Oklahoma;

2 boxes whiskey consigned from R. Eisen & Co., Kansas City, Mo., shippers order notify D. Lindsay, Bartlesville, Oklahoma;

4 boxes whiskey consigned from R. Eisen & Co., Kansas City, Mo., shippers order notify J. F. Parker, Bartlesville, Oklahoma;

1 box whiskey consigned by Danciger Bros., Kansas City, Mo., shippers order notify J. F. Williams, Bartlesville, Oklahoma;

2 cases liquor consigned by Interstate Mer. Co., Joplin, Mo., shippers order notify E. E. Creighton, Bartlesville, Oklahoma;

3 cases liquor consigned by Interstate Mer. Co., Joplin, Mo., shippers order notify Pearl Pruitt, Bartlesville, Oklahoma;

Further complaining, your orator states that upon the same day the said defendants above named unlawfully and wrongfully entered the depot building of your orator at its station at Bartlesville, in the said Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire, and upon which its bill of lading was still outstanding and no delivery made thereunder:

20 cases of beer consigned from E. E. Wood, Bartlesville, Oklahoma, to Anheuser Busch Brewing Co., St. Louis, Mo.

Further complaining, your orator states that on the same day the said defendants above named unlawfully and wrongfully entered the car of your orator, No. M. K. & T. 70969, located on its team track between Third and Fourth Streets at its station at Bartlesville, Oklahoma, in the said Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said car

the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire and upon which the freight charges had been paid and bills of lading surrendered:

7 barrels of beer and 15 barrels whiskey consigned from Anheuser Busch Brewing Co., St. Louis, Mo., to Charles Mitchem, Bartlesville, Oklahoma.

Further complaining, your orator states that on the same day the defendants, John H. Kane, John D. Jordan and R. S. Duke unlawfully and wrongfully entered the depot building of your orator at its station at Dewey in the said Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire, and upon which the freight charges had not been paid except where prepaid and bills of lading had not been surrendered and no delivery made by your orator:

2 boxes liquor consigned from Al Valland Co., Kansas City, Mo., to Will Browning, Dewey, Okla.,

2 cases whiskey consigned from Levy Schrier Dist. Co., Kansas City, Mo., to shippers order notify Will Browning, Dewey, Oklahoma,

2 boxes whiskey consigned from Al Valland Co., Kansas City, Mo., to shippers order notify Will Browning, Dewey, Oklahoma,

1 case liquor consigned from Interstate Merc. Co., Joplin, Mo., to shipper's order notify D. Mooney, Dewey, Oklahoma,

1 case liquor consigned from Interstate Merc. Co., Joplin, Mo., to shippers order notify D. Mooney, Dewey, Oklahoma.

Further complaining, your orator states that on December 22, 1909, the defendants, J. L. Walker and Pat Fields unlawfully and wrongfully entered the depot building of your orator at its station at Dewey in the said Eastern District of the State of Oklahoma, and unlawfully and

wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire and upon which the freight charges had not been paid except where prepaid and bills of lading had not been surrendered and no delivery made by your orator:

1 case liquor consigned from Interstate Merc. Co., Joplin, Mo., to shippers order notify J. D. Worthy, Dewey, Oklahoma,

1 box liquor consigned from Independent Dist. Co., Kansas City, Mo., to A. E. Brown, Dewey, Oklahoma.

Further complaining, your orator states that on December 23, 1909, the defendants, J. L. Walker, and Pat Fields, unlawfully and wrongfully entered the depot building of your orator at its station at Dewey, in the said Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire and upon which the freight charges had not been paid except where prepaid and bills of lading had not been surrendered and no delivery made by your orator:

1 box liquor consigned from R. Eisen Bros. & Co., Kansas City, Mo., to shippers order notify Dick Archer, Dewey, Oklahoma.

Further complaining, your orator states that on December 24, 1909, the defendants, J. L. Walker and Pat Fields, unlawfully and wrongfully entered the depot building of your orator at its station at Dewey, in the said Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire and upon which the freight charges had not been paid except where prepaid and bills of lading had not been surrendered and no delivery made by your orator:

2 boxes liquor consigned from R. Eisen Bros. & Co.,

Kansas City, Mo., to shippers order notify Dick Archer, Dewey, Oklahoma.

Further complaining, your orator states that on December 31, 1909, the defendants, John H. Kane and John D. Jordan, unlawfully and wrongfully entered the depot building of your orator at its station at Bartlesville, in the said Eastern District of the State of Oklahoma, and unlawfully and wrongfully seized and took away from said depot the following interstate shipments of liquor which were in the possession of your orator as a common carrier for hire and upon which the freight charges had not been paid and bills of lading had not been surrendered and no delivery made by your orator:

1 keg liquor consigned from Fehrenback Dist. Co., Joplin, Mo., to shippers order notify Dan Fanning, Bartlesville, Oklahoma;

2 cases whiskey consigned from Fehrenback Dist. Co., Joplin, Mo., to shippers order notify Jack Irwin, Bartlesville, Oklahoma;

2 cases whiskey consigned from Fehrenback Dist. Co., Joplin, Mo., to shippers order notify Chas. Shea, Bartlesville, Oklahoma;

2 cases whiskey consigned from Fehrenback Dist. Co., Joplin, Mo., to shippers order notify Bert Fugate, Bartlesville, Oklahoma;

2 cases whiskey consigned from Fehrenback Dist. Co., Joplin, Mo., to shippers order notify Charlie Robertson, Bartlesville, Oklahoma;

1 box whiskey consigned from Danciger Bros., Kansas City, Mo., to shippers order notify M. Gordon, Bartlesville, Oklahoma;

4 cases whiskey consigned from Levy Schrier, Kansas City, Mo., to shippers order notify Turk Irwin, Bartlesville, Oklahoma;

2 cases whiskey consigned from Levy Schrier, Kansas City, Mo., to shippers order notify John Mayes, Bartlesville, Oklahoma;

2 cases whiskey consigned from Levy Schrier, Kansas City, Mo., to shippers order notify E. J. Williford, Bartlesville, Oklahoma;

1 box whiskey consigned from Danciger Bros., Kansas City, Mo., to shippers order notify E. Glover, Bartlesville, Oklahoma;

1 box whiskey consigned from the Druggist Cooperative Mer. Co., Kansas City, Mo., to shippers order notify E. Glover, Bartlesville, Oklahoma;

1 box whiskey consigned from Danciger Bros., Kansas City, Mo., to shippers order notify M. Gordon, Bartlesville, Oklahoma.

Further complaining, your orator states that the said above shipments so wrongfully seized by the said defendants from your orator's depot and car at Bartlesville, and from your orator's depot at Dewey, Oklahoma, on December 20, 1909, and from your orator's depot at Bartlesville, Oklahoma, on December 31, 1909, are now wrongfully and unlawfully held by the defendant, John D. Jordan, at Bartlesville, Oklahoma, and that the above shipments so wrongfully seized by the said defendants from your orator's depot at Dewey, Oklahoma, on December 22, 1909, December 23, 1909, and December 24, 1909, are now wrongfully and unlawfully held by the defendants at Dewey, Oklahoma, and that unless prevented by order of this Court from so doing the said defendants will at an early day cause a pretended order of forfeiture of said liquor to be made as against your orator and will permanently withhold the same from your orator, claiming to do so by virtue of the State Statute of the State of Oklahoma, hereinabove referred to.

Further complaining, your orator states that the said defendants decline to deliver back to your orator the above specified interstate shipments of liquor so as aforesaid wrongfully and unlawfully seized from your orator at its depots at Bartlesville and Dewey, Oklahoma, and that if said interstate shipments of liquor so unlawfully and

wrongfully seized from your orator as aforesaid are not promptly delivered back into the possession of your orator that a large number of suits will be instituted against your orator by persons having or claiming an interest in said shipments to the great expense and annoyance of your orator.

Further complaining, your orator states that by virtue of its business as a common carrier of goods for hire, it will be compelled to receive large quantities of interstate shipments of liquor consigned from points outside the State of Oklahoma to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma to points without the State of Oklahoma, the value of which shipments will in the course of one year's time exceed the sum of many thousands of dollars, and the earnings of your orator in transporting same will be much more than the sum of Two Thousand Dollars, exclusive of interest and costs, and that the defendants herein are threatening to continue this wrongful and unlawful interference with the interstate business of your orator in the transportation and delivery of these interstate shipments of goods, and which interference on their part will involve your orator in innumerable law suits at various points with various parties who may offer to your orator at points outside of the State of Oklahoma shipments of liquor consigned to points within the Eastern District of the State of Oklahoma, and at points within the Eastern District of the State of Oklahoma, shipments of liquor consigned to points without the State of Oklahoma, and to all of which persons your orator would be required to issue its bill of lading covering interstate shipment of goods so offered to it, and for whom it will be under the law required to transport said liquor in accordance with said bills of lading.

Further complaining, your orator states that under the Constitution and laws of the United States it has lawfully carried over its line from points without the State of Ok-

lahoma, consigned to points within the Eastern District of the State of Oklahoma, the shipments hereinabove specified which have so as aforesaid been wrongfully and unlawfully seized from your orator, and that your orator in accordance with its lawful duty must engage in the future in the transportation of these intoxicating liquors from points without the State of Oklahoma to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma to points without the State of Oklahoma, and there deliver said consignments to the consignee named in the bills of lading, and that the defendants by their course are seeking to deny the right of your orator under the Constitution and laws of the United States so to do, and to deprive your orator of the right so to do as guaranteed to it by the Constitution and laws of the United States, and that your orator is entitled to be protected in its said right by the order of this Court.

Further complaining, your orator states that it believes and charges that the defendants are not financially able to respond in damages for the large sums of money in which your orator will be damaged by reason of the continued wrongs and injuries heretofore practiced and hereafter to be practiced by said defendants on your orator as hereinabove alleged.

To the end, therefore, that your orator may have the relief to which it is justly entitled in the premises, the matters herein being cognizable and relieviable only in a Court of equity, your orator prays the Court to grant due process for subpoena directed to the said defendants, John M. Hayes, John H. Kane, John D. Jordan, John B. Trail, John Wilson, R. S. Duke, J. L. Walker and Fat Fields, and each of them requiring and commanding them to appear herein and answer, but not under oath, answer under oath being expressly waived to the several allegations in this your orator's bill contained.

Your orator further prays that an order issue against said defendants and each of them returnable upon a particular day and hour before this Court to show cause why they should not be restrained by temporary injunction of this Court from further interfering with or seizing or receiving or aiding, abetting, assisting, advising or encouraging any other person or persons to interfere with or seize any shipment of whiskey, beer, wine, brandy or other liquors that may be in the possession of your orator in its cars or depots within the Eastern District of the State of Oklahoma, consigned from points without the State of Oklahoma to points within the Eastern District of the State of Oklahoma, or from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and directed to at once deliver to the agents of your orator at its depots at Bartlesville and Dewey, Oklahoma, respectively, the respective shipments of liquor so as aforesaid wrongfully and unlawfully seized and taken therefrom.

Your orator further prays that in the meantime and until said order to show cause may be heard and determined that restraining order issue restraining said defendants and each of them and their agents and employees from entering the cars and depots or other premises of your orator, and from taking therefrom intoxicating liquors shipped from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that said defendants and each of them, their agents and employees, be restrained from in anywise interfering with your orator in its handling and delivery of such interstate shipments of intoxicating liquors, or inciting, aiding, abetting, advising or encouraging other persons so to do, and that the said defendants and each of them be further restrained from taking any steps look-

ing to the forfeiture of any of the liquors mentioned in this your orator's bill as having heretofore been unlawfully seized and taken from your orator's depots at Bartlesville and Dewey, Oklahoma, and that the defendants now having charge or possession of any or all of said liquors shall retain same in their possession without any change whatever as to the status of said liquors until said order to show cause may be heard and determined.

Your orator further prays that upon the hearing of this suit and adjudication thereof, the said defendants and each of them be perpetually enjoined from interfering with or seizing or receiving or aiding, abetting, assisting, advising, or encouraging any other person or persons to interfere with or seize any shipment of whiskey, beer, wine, brandy or other liquors that may be in the possession of your orator in its cars or depots within the Eastern District of the State of Oklahoma, consigned from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, or from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that said defendants be directed to at once deliver to the agents of your orator at its depots at Bartlesville and Dewey, Oklahoma, respectively, the respective shipments of liquor so as aforesaid wrongfully and unlawfully seized and taken therefrom; and that said defendants and each of them be perpetually enjoined from entering the cars or depots or other premises of your orator in the Eastern District of the State of Oklahoma, and from taking therefrom intoxicating liquors shipped from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, and from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that the defendants and each of them be perpetually enjoined from taking any steps looking to the forfeiture of any of the liquors

mentioned in this your orator's bill as having heretobefore been unlawfully seized and taken from your orator's depots at Bartlesville and Dewey, Oklahoma.

And your orator further prays that your orator may have such other and further relief preliminary and final as to the Court may seem meet and proper, and which equity and good conscience may require, and for its costs.

CLIFFORD L. JACKSON, AND

M. D. GREEN,

Solicitors for Complainant.

UNITED STATES OF AMERICA,

ss.

EASTERN DISTRICT OF OKLAHOMA.

H. T. Winn, being first duly sworn upon oath states that he is the regularly appointed and acting agent for the Complainant at its station at Bartlesville, Oklahoma; that he has read the above and foregoing bill and knows the contents thereof and is familiar with the matters and things therein contained, and that the allegations and averments therein contained are true, except the matters alleged to have occurred at Dewey, Oklahoma, as to which affiant has no knowledge.

H. T. WINN.

Subscribed and sworn to before me this 12th day of January, A. D. 1910.

WILLIAM P. Z GERMAN.

Notary Public.

My Commission Expires June 26-1912.

(SEAL.)

UNITED STATES OF AMERICA,

ss.

EASTERN DISTRICT OF OKLAHOMA.

Charles Taylor, being first duly sworn upon oath states that he is the regularly appointed and acting station agent for the Complainant at its station at Dewey, Oklahoma; that he has read the above and foregoing bill and knows

the contents thereof and is familiar with the matters and things therein contained, and that the allegations and averments therein contained are true, except the matters alleged to have occurred at Bartlesville, Oklahoma, as to which affiant has no knowledge.

CHARLES TAYLOR.

Subscribed and sworn to before me this 12th day of January, A. D. 1910.

WILLIAM P. Z. GERMAN,
Notary Public.

My Commission Expires June 26-1912.

(SEAL.)

FILED, Jan. 18, 1910.

L. G. DISNEY,
Clerk U. S. Circuit Court, Eastern Dist. Okla.

On January 24th, 1910, the Court granted a temporary injunction in said cause as follows:

IN THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND
FOR THE EASTERN DISTRICT OF THE STATE OF OKLAHOMA.

No. 1267.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

JOHN M. HAYES, ET AL., *Defendants.*

TEMPORARY INJUNCTION.

Now on this 24th day of January, 1910, this cause coming on to be heard upon the application of the complainant for temporary injunction herein, and the complainant being present and the defendants not appearing either in person or by attorney, and it appearing that due service was had upon all of the defendants, and the Court having heard counsel for the complainant and having seen the papers and pleadings on file herein and being well and sufficiently advised in the premises, and it appearing to

the Court that temporary injunction should issue against the defendants herein,

It is, therefore, ordered that the defendants, John M. Hayes, John H. Kane, John D. Jordan, John B. Trail, John Wilson, R. S. Duke, J. L. Walker and Pat Fields be, and they are hereby enjoined and restrained from interfering with or seizing or receiving or aiding, abetting, advising or encouraging any other person or persons to interfere with or seize any shipment of whiskey, beer, wine, brandy or other liquors that may be in the possession of the complainant, the Missouri, Kansas & Texas Railway Company within the Eastern District of the State of Oklahoma, consigned from points without the State of Oklahoma, to points within the Eastern District of the State of Oklahoma, before delivery to the consignee or from points within the Eastern District of the State of Oklahoma, to points without the State of Oklahoma, and that said defendants and each of them be, and they are hereby enjoined and restrained from entering the cars and depots or other premises of the complainant, Missouri, Kansas & Texas Railway Company, in the Eastern District of the State of Oklahoma, and from taking therefrom intoxicating liquors shipped from points without the State of Oklahoma to points within the Eastern District of the State of Oklahoma, before delivery to the consignee and from points within the Eastern District of the State of Oklahoma to points without the State of Oklahoma.

This order to be in full force and effect until further order of this Court upon the filing of a bond by the complainant in the sum of One Thousand Dollars (\$1,000.00).

RALPH E. CAMPBELL,

*Judge United States Circuit Court for the Eastern
District of the State of Oklahoma.*

FILED, Feb. 8, 1910.

L. G. DIRNEY,

Clerk U. S. Circuit Court, Eastern Dist. Okla.

On February 7th, 1910, the respondents filed their demurrer in said cause as follows:

UNITED STATES OF AMERICA,
STATE OF OKLAHOMA, ss.
EASTERN DISTRICT.

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN
AND FOR SAID DISTRICT.

No. 1267.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
Complainant,

vs.

JOHN M. HAYS, JOHN H. JANE, JOHN D. JORDAN,
JOHN B. TRAIL, JOHN WILSON, R. S. DUKE, J. L.
WALKER AND PAT FIELDS, *Defendants.*

DEMURRER FOR LACK OF JURISDICTION AND
EQUITY.

These Respondents, John M. Hays, John H. Kane, John D. Jordan, John B. Trail, John Wilson, R. S. Duke, J. L. Walker and Pat Fields, by protestation, not confessing or acknowledging all, or any, of the matters or things in the said bill of complainant contained, to be true, in such manner as the same are therein set forth and alleged, demur to the said bill; and for cause of demurrer show:

I.

That it appears by the complainant's own showing by the said bill that it is not entitled to the relief prayed by said bill against these respondents, or any of them.

II.

That it appears from complainant's said bill of complaint that this Court has no jurisdiction to hear and determine this action, and that the relief prayed for is sought in direct violation of the Seventh and the Eleventh Amendments to the Constitution of the United States, and

175

in direct violation of Section 720 of the Revised Statutes of the United States.

III.

That complainant's said bill of complaint is wholly without equity.

WHEREFORE, and for divers other good causes of demurrer in said bill, these respondents demur thereto, and they and each of them pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to complainant's said bill; and they and each of them humbly pray to be hence dismissed with their reasonable costs in their half sustained.

FRED S. CALDWELL,
Solicitor for Respondents.

VERIFICATION.

STATE OF OKLAHOMA,

ss.

COUNTY OF LOGAN,

Fred S. Caldwell, being first duly sworn, on oath says: That he is the solicitor for the respondents to the foregoing demurrer in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point of law; and on behalf of said respondents, and each of them, says that the same is not interposed for delay.

FRED S. CALDWELL.

Subscribed and sworn to before me this 27th day of Jan., 1910.

JULIET WRIGHT,
Notary Public.

My Com. Exp. Dec. 19, 1911.

(SEAL.)

FILED, Feb. 7, 1910.

L. G. DISNEY,
Clerk U. S. Circuit Court, Eastern Dist. Okla.

The foregoing are the bills and supplemental bills filed in said causes, the restraining orders granted, where they are still in force and not superceded by orders of temporary injunction, and such injunction orders as were in force at the time of the filing of the petition herein, together with such affidavits, stipulations, objections and demurrers as were filed and considered at the hearings.

RESPONDENT'S STATEMENT.

In considering the questions involved in the foregoing actions and others of a similar nature, recently prosecuted in this court, respondent had occasion to render two written opinions upon the matters in controversy, setting forth his conclusions as to the law and his reasons therefor. In one of these opinions, filed in case number 1016, *Dan Danciger, et al., v. S. W. Stone, et al.*, respondent said:

"On April 30, 1909, complainants filed their bill in this court against the superintendent of the state agency, James King, sheriff of Hughes County, Okla.; Attie Roberts, chief of police of Holdenville, Hughes County, Okla.; the sheriff of Choctaw County, Okla., and the sheriff of McClain County, Okla., in which it appears that the complainants are non-residents of this state, that the defendants are residents of the state, and that the amount in controversy exceeds the sum of \$2,000, exclusive of interest and costs. They allege that they are shippers of liquor, having their principal place of business in Kansas City, Mo., and having customers residing in various states, including Oklahoma; that by the use of the United States mail they send out advertising matter and circulars, and receive from citizens of Oklahoma orders for alcoholic liquors, to be sent them by freight, the price to be paid after arrival of the goods, the method being what is known as 'shipper's

order,' or 'sight draft with bill of lading attached;' that all liquors shipped are shipped under bona fide orders received by them in Kansas City from customers in Oklahoma. The bill further alleges:

"That complainants do not make shipments into the state of Oklahoma in order that the same should be there unlawfully sold, or given away, nor were the liquors by the complainants or by any agents of the complainants kept in the state of Oklahoma, or kept at any point in said state for the purpose of selling the same or giving the same away. In the event that the consignee does not pay the draft sent to the bank, and take up the bill of lading, for his shipment, the goods as directed by the bill of lading are ordered returned to Kansas City, and in no case is any shipment sent out to one person there allowed to be turned over or delivered to any other person. All bills of lading contain the instructions to return in 10 days if not delivered."

"They further allege that the defendants, in excess of their authority as officers of the law, have wrongfully seized from the depots at various points named within the Eastern district of Oklahoma certain shipments of liquor while the same were in the hands of the carrier and before delivery to the consignee, the same being plainly marked with the name of the consignee. It is further alleged:

"Complainants further state that they have in the past suffered harassment, great loss, and inconvenience by reason of the fact that public officers in the Eastern district of Oklahoma, who are not learned in the law, have, in excess of their authority as officers, seized goods consigned by these complainants while still in the hands of the carrier and still articles of interstate commerce; that they are still constantly subjected to such interference despite the fact that they have sent to all sheriffs and public officers copies of the rulings of courts of competent juris-

diction in regard to the illegality of such seizures; that their business is being seriously injured by reason of delays in delivery due to the above cause and threats of seizure by said officers.

"Complainants further show that the defendants and each of them are threatening to continue, and unless restrained by an order of this honorable court will continue, to advise, instruct, direct, aid, and abet in making, and will make seizures of said liquors while in the hands of the carriers, shipped by the complainants into the State of Oklahoma by the 'shipper's order,' 'order notify,' or 'sight draft and bill of lading' method, as above described, and will continue advising and making seizures of such liquors when in the opinion of the officers such liquors so shipped are not intended for the personal use of the consignee, or in their opinion the consignee expects to sell same. * * *

"Complainants further show that, unless said defendants be restrained by an order of this court as hereinafter more fully prayed for, an irreparable injury will be inflicted upon the business of complainants in carrying on interstate commerce under the protection of the United States Constitution as shown above, and for which action at law will furnish no adequate relief and an attempted resort to an action at law would result in a multiplicity of suits and vexatious and expensive litigation.

"Complainants pray that defendants shall be required to restore liquors already seized, and enjoined from making further seizures, and for leave to supplement this proceeding from time to time, to bring in other persons who shall unlawfully seize goods so consigned by complainants.

"Restraining orders were issued and time set for hearing upon motion for temporary injunction, of which notice was given the defendants. At the hearing upon the temporary injunction on May 15th last, the defendant Stone appeared, and having answered, and complainants not de-

siring to further proceed against him, the restraining order as to him was dissolved. The defendants King, Roberts, sheriff of McClain County, and sheriff of Choctaw County, appeared neither in person nor by counsel. As to them, the order of temporary injunction was entered, also granting leave to complainants to apply to the court from time to time to make parties defendant hereto other public officers in the Eastern district of Oklahoma, who shall seize or interfere with goods consigned by complainants herein while still in the hands of the carrier. By supplemental bills filed on October 16th and 26th the following persons were made parties to this proceeding, restraining orders issued against them, and the hearing for temporary injunction set for November 1st, to-wit: Sheriff of Bryan County, the chief of police of Vinita, Craig County, the chief of police of Tahlequah, Cherokee County, sheriff of Tulsa County, the sheriff of Murray County, the sheriff of Stephens County, and the sheriff of Pontotoc County. At the hearing on the temporary injunction as to the defendants in the supplemental bills, they appeared by their attorney, Fred S. Caldwell, and the following stipulation of counsel was entered into, as to the facts in this case, to-wit:

"That all seizures referred to in complainants bill and about which complainants are complaining were made under and pursuant to search and seizure warrants issued out of the state courts of competent jurisdiction under and pursuant to search and seizure warrants issued out of the state courts of competent jurisdiction under and pursuant to the provisions of Sections 5 and 6, Article 3, of Chapter 69 of the Session Laws of 1907 and 1908 of the State of Oklahoma. And it is further stipulated and agreed that the relief which the complainants herein are seeking is that the defendants herein be enjoined from executing such search and seizure warrants so issued by said state courts under and pursuant to Sections 5 and 6,

Article 3, of said Chapter 69 of the Session Laws of 1907 and 1908 of the State of Oklahoma, and prosecuting the same, in all cases where the execution of such search and seizure warrants necessitates the taking and seizing of intoxicating liquors shipped into the State of Oklahoma by the complainants herein through interstate commerce, where such interstate shipments of intoxicating liquors are in the hands of the interstate carrier and prior to the delivery thereof by the interstate carrier to the consignee at the point of destination in the State of Oklahoma under the terms and provisions of the contract of interstate shipment."

"Two principal grounds are urged by the defendants now before the court why the temporary injunction should not issue: First, that it is in effect enjoining a state court contrary to section 720, Rev. St. (U. S. Comp. St. 1901, p. 581); and, second, that, as the complainants allege in their bill that the orders are secured by circulars and advertisements sent into Oklahoma, it therefore appears that they are violating the laws of the state, and hence do not come into this court of equity with clean hands. Section 720, Rev. St., is as follows:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by a law relating to proceedings in bankruptcy."

"Sections 5, 6, art. 3, c. 69, p. 605, Sess. Laws Okl. 1907-08, referred to in the stipulation, provide that any judge of the district or county court or justice of the peace, upon showing of probable cause, may issue search and seizure warrants directed to any officer of the county to seize liquors under certain circumstances therein mentioned, provide for hearing as to whether such liquors are being unlawfully held and handled, etc., and by the stipulation it appears that the seizures herein complained of were

made by the defendants under and pursuant to such search and seizure of warrants."

"In the recent case of *Adams Express Company v. Kentucky*, 214 U. S. 218, 29 Sup. Ct. 633, 53 L. Ed. 972, Mr. Justice Brewer, reviewing the authorities, has tersely stated the law as to a number of questions relating to interstate commerce in liquors which that court has had occasion to consider. He says:

"Liquor, however obnoxious and hurtful it may be in the judgment of many, is a recognized article of commerce. Equally well established is the proposition that the right to send liquors from one state to another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and hence that a state law which denies such a right, or substantially interferes with or hampers the same, is in conflict with the Constitution of the United States. That the transportation is not complete until delivery to the consignee is also settled. In *Rhodes v. Iowa*, 170 U. S. 412 (18 Sup. Ct. 664, 42 L. Ed. 1088), it was held that the Wilson act was not intended to and did not cause the power of the state to attach to an interstate commerce shipment whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee."

"The statute of Kentucky Justice Brewer was then considering is as follows:

"Any person who shall lend, give, procure for, or furnish spirituous, vinous, or malt liquors, or any mixture of either, knowingly, to a person who is an inebriate or in the habit of becoming intoxicated or drunk by the use of any such liquors, or who shall suffer or permit any such person to drink any such liquors in his barroom, saloon, or upon the premises under his control, or in his possession, shall be fined for each offense fifty dollars. * * *

"One Tharp, a resident of Kentucky, bought and paid for liquor from liquor dealers in Tennessee and Indiana, and had the same shipped to himself in Kentucky, via Adams Express Company's line. Tharp was in the habit of becoming intoxicated, and the agent of the express company knew this fact when he delivered the liquors.' The company was indicted and convicted under the statute, and appealed the case to the Supreme Court. Regarding the statute, Justice Brewer says:

"This legislation is in the exercise of the police power, which, generally speaking, belongs to the state, and is an attempt in virtue of that power to directly regulate commerce, but, in case of conflict between the powers claimed by the state and those which belong exclusively to Congress, the former must yield, for the Constitution of the United States and the laws made in pursuance thereto are the supreme law of the land. Section 5258 of the Revised Statutes of the United States (U. S. Comp. St. 1901, p. 3564) provide: 'Every railroad company within the United States is hereby authorized to carry upon and over its road all passengers, freight, and property on their way from any state to another state, and receive compensation therefor.' * * * In *Atlantic Coast Line Railroad Company v. Wharton*, 207 U. S. 328 (28 Sup. Ct. 121, 52 L. Ed. 230), it was declared that any exercise of state authority, in whatever form manifested, which directly regulates interstate commerce, is repugnant to the commerce clause of the Constitution. In *Adams Express Company v. Kentucky*, 206 U. S. 129 (27 Sup. Ct. 606, 51 L. Ed. 987) 'the testimony showed that a package containing a gallon of whiskey was shipped from Cincinnati, Ohio, to George Meece, at East Bernstadt, Kentucky. The transaction was therefore one of interstate commerce, and within the exclusive jurisdiction of Congress. The Kentucky statute is obviously an attempt to regulate interstate commerce. That is hardly questioned by the Court of Appeals,

and is beyond dispute by the decisions of this court.' Clearly within the cases above stated, the statute before us as applied to transportation from state to state cannot be sustained."

"I have quoted at length from this decision because it covers so tersely and comprehensively the law relating to this subject. Under the facts as stipulated in this case, the shipments seized were still in the hands of the carrier, were interstate commerce, and had not become subject to the laws of the state. If it be contended that in enacting the search and seizure laws referred to the Legislature intended that they should apply to such interstate commerce, then the answer is that, to that extent, the law is invalid, because it is made to apply to a subject within the state. *It is contended that such was not the intention of the Legislature, then the state courts are exceeding the law in issuing such search and seizure warrants. They are in my judgment no protection to the officer who seeks by them to justify his acts thereunder, and to enjoin him from executing them is not a violation of section 720 of the Revised Statutes. The authority of the state does not attach to shipments of the character involved in this case until the delivery to the consignee. The prohibitory law is leveled at the manufacture, sale, bartering, giving away, or otherwise furnishing of liquors within the state, and under the Wilson act (Act Aug. 8, 1890, c. 728, 26 Stat. 313 [U. S. Comp. St. 1901, p. 3177]) such liquors are subject to the law immediately upon delivery to the consignee, but not before.*

In the other opinion, filed in case number 1232, Dan Danciger, et al, vs. S. W. Stone, et al, respondent said:

"The complainants allege in their bill that their principal method and custom of making shipments into other states, including the State of Oklahoma, is to receive mail orders for shipments from customers outside of the State

of Missouri for sale and shipment of liquors to be made in Missouri, and directed to other states; that after said orders are accepted by complainants, the liquors are delivered at Kansas City, Missouri, to various railroad companies and other common carriers, transporting freight from said State of Missouri to such other states; that in all cases where goods are sold, and delivered to the carrier in Kansas City, Missouri, the said sales are made outside of the State of Oklahoma, and the goods are delivered to the carrier for the purpose of making delivery to the consignee only. Complainants further allege that after delivering said liquors to carriers for shipment, as aforesaid, in the State of Missouri, they receive from the carrier a bill of lading and forward said bill of lading to a bank, or some responsible person, at the home of the consignee, attached to which is a sight draft for the purchase price of the liquor. The customer pays the draft and receives the bill of lading, and presents the same to the railroad company and receives the shipment. That this method is what is known to the railroad, and to the public generally, as 'shipper's order,' 'order notify,' or 'sight draft and bill of lading' method.

"Respondents contend that complainants are not entitled to the protection of the commerce clause of the Constitution, for the reason that their method of business, as stated in their bill, amounts to a sale of liquor within the State of Oklahoma, and is, therefore, a violation of the state prohibitory law. In the opinion of the court, this question is determined adverse to respondent's contention by the ruling of the Supreme Court of the United States in *American Express Co. vs. Iowa*, 196 U. S., 133.

"It is further and especially urged by respondents that complainants can not invoke the aid of a court of equity because it appears from their bill that their business is carried on and conducted in direct violation of section 239 of an Act of Congress approved March 4th, 1909, (35

Stat. 1136-6), which reads as follows.

"Any railroad company, express company, or other common carrier, or any other person who, in connection with the transportation of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall collect the purchase price or any part thereof, before, on, or after delivery, from the consignee, or from any other person, or shall in any manner act as the agent of the buyer or seller of any such liquor, for the purpose of buying or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined not more than five thousand dollars."

"It is urged that under this statute any bank which collects one of complainant's drafts with bill of lading attached, violates the foregoing statute, and that as complainant confesses that it is procuring banks so to do, it is not in position to seek aid of this court of equity. Unless under this statute a bank in this state may be criminally prosecuted for collecting one of the complainant's drafts, there is no force in respondent's contention. Let us analyze the statute and see against whom and what it is directed. The law applies to 'any railroad company, express company, or other common carrier, or any other person' whose acts shall bring him within its terms. The acts at which the statute is leveled are, first, the collection of the purchase price, or any part thereof before, on, or after delivery, from the consignee, or from any other person; and, second, in any manner acting as the agent of the buyer, or seller, of any such liquor, for the purpose of buying

or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same. But such acts are only condemned by this section when they are committed in connection with the interstate transportation of such liquor. It is true the bank, when it collects the draft collects the purchase price of the liquor, but can such collection be said to be in any way in connection with the interstate transportation of the same? The transportation is effected by the railroad company, or other common carrier, entirely independent of the bank. The transportation of the liquor and the collection of the draft are two separate and distinct acts, performed by separate and distinct individuals or corporations, and the fact that the carrier, under its contract, cannot deliver the shipment until the consignee first goes to the bank and pays the draft, to secure the bill of lading, and then presents it to the carrier, can not be said to in any way connect the bank with the transportation. Its act can not therefore be said to be in violation of the terms of the statute. To my mind, there is nothing obscure about this section of the statute. Its manifest purpose is to provide that common carriers, or any other persons, engaged in or connected with the interstate transportation of intoxicating liquors, shall confine themselves wholly to such carriage and transportation, and shall not act as agent of the buyer or seller of liquor, for the purposes of the collection of the purchase price, or for any other purpose, 'saving only in the actual transportation and delivery of the same.' This construction of the statute is clearly sustained by the report of the Congressional Committee, relative to this legislation while the same was pending in Congress, an extract of which is quoted in complainant's brief, and reads as follows:

"The principal cause of difficulty in restricting the liquor traffic in the states prohibiting such traffic, has been the misuse of the facilities furnished by railroad companies, express companies, and other common carriers in

bringing in liquors from outside states to be paid for on delivery. To meet this evil, your committee report the substitute.

"By the proposed substitute, if it be enacted into law, Congress will, under its constitutional authority, bring its power to bear directly upon the common carriers, prohibiting them from acting as agents of the vendors of liquors in other states. Further, by requiring that all interstate shipments of liquors shall be plainly marked as to their contents, the substitute hereby submitted will enable the several states to trace and to control the disposition and use of such liquors under their own police powers."

"It follows that the demurrer must be overruled, and the temporary injunction granted."

The liquor involved in the shipments sought to be protected is a legitimate article of interstate commerce. *Leisy v. Hardin*, 135 U. S., 110. The right to send liquors from one state to another and the act of sending the same is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and hence a state law which denies such a right, or substantially interferes with or hampers the same, is in conflict with the Constitution of the United States. *Vance v. Vandercook*, 170 U. S., 444.

The interstate commerce clause of the Constitution guarantees the right to ship merchandise from one state into another and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress which allows state authority to attach before sale, *but only after delivery*. *Vance v. Vandercook*, *supra*. In *Heyman v. Southern Railway Company*, 203 U. S., 274,

quoting from the *Rhodes case*, in reference to the *Wilson Act*, it is said:

“Interpreting the statute by the light of all its provisions, it was not intended to and did not cause the power of the state to attach to an interstate commerce shipment whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to consignee.”

The verified bills in the cases involved show that the liquor is shipped into Oklahoma from various states where the same may lawfully be sold. The contract of sale is made at the point where the shipment originates. In the absence of a showing to the contrary, and there is none, it may be presumed that the shipment is lawfully made pursuant to the constitutional right of a person in Oklahoma to purchase liquor outside the state and have it shipped to him in the state. In most of the bills, complainants affirmatively allege that the shipments sought to be made are to *bona fide* purchasers, and that complainants are not engaged or participating in any unlawful sales of liquor in Oklahoma, but are only engaged in the lawful sale thereof, and its shipment in interstate commerce.

At the hearings upon the applications for temporary injunctions, defendants made no showing to the contrary.

The search and seizure warrants, under which defendants seek to justify their interference with the liquors in question are only authorized where it shall be made to appear to the magistrate issuing the same that there is probable cause to believe that liquors are being manufactured, sold, bartered, given away, or otherwise furnished,

or are being kept for such purposes. In that event a warrant may be issued to the officer to search the premises described and seize *such* liquors there found. It is clear from a reading of the statute that it only applies to liquors which have become a part of the common mass of property within the state. It can have no reference to liquor which is still the subject of interstate commerce, and had the legislature so intended, which will not be presumed, the act would, to that extent, be unconstitutional. It appears from the stipulations filed in some of the cases, and is true in all the cases, that the liquors sought to be seized are, in each instance, liquors shipped into the State of Oklahoma by the complainants, through interstate commerce, which are still in the hands of the interstate carrier, under the terms and provisions of the contract of interstate shipment, held by it in its capacity as an interstate carrier and before delivery, either actual or constructive, to the consignee. In issuing the temporary injunction orders, the court has been careful to confine their application only to shipments having such status. The property sought to be protected being still in transit as interstate commerce and undelivered, the state law has not attached to it. It is not, therefore a subject of search and seizure under the law. A warrant issued pursuant to the law cannot legally apply to it, and must therefore be void as to such property. An officer can not justify under a void warrant. The state enforcement officers and all others seeking under the guise of the state law to reach such liquors while they are confessedly still in the hands of the carrier as interstate commerce, and before delivery, stand stripped of any authority which

their respective offices might confer upon them while acting within the lawful scope of their authority. If these seizures are permitted, complainants will either have to abandon their property so seized, or defend a multiplicity of suits, the number of which will be determined only by the zeal of the enforcement officers in their interference with interstate commerce. As the record now stands, the complainants of course must eventually win in such suits, for upon a showing to the state court that the property seized was still interstate commerce, undelivered to the consignee, it would have to be ordered returned to the complainants. It is not conceived, however, that such a course presents that adequate legal remedy which precludes the action of a court of equity. Nor is it conceived that in granting the temporary injunctions complained of, respondent is violating the 11th amendment to the Constitution, or section 720 of the Revised Statutes of the United States, because the injunctions may prevent one or more of the defendants from thereafter causing such warrants of search and seizure to issue, or from executing such warrants after issuance.

Respondent believes that the law as outlined in the following cases, among others, not only justifies but requires the action taken:

Bowman vs. Chicago, etc. Ry. Co., 125 U. S., 465.

Leisy vs. Hardin, 135 U. S., 100.

Scott vs. Donald, 165 U. S., 58.

Rhodes vs. Iowa, 170 U. S., 412.

Vance vs. Vandercook, 170 U. S., 438.

Heyman vs. Southern Ry. Co., 203 U. S., 270.

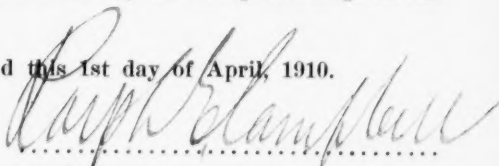
Adams Ex. Co. vs. Ky., 206 U. S., 129.

Ex parte Young, 209 U. S., 123.

Adams Ex. Co. vs. Ky., 214 U. S., 218.

And thereupon it is respectfully submitted whether or not this court should take any further proceedings in the said causes.

Witness my hand this 1st day of April, 1910.

A handwritten signature in cursive script, appearing to read "Ralph Blamphore". The signature is written in dark ink and is positioned above a dotted line.

.....
*United States District Judge for the Eastern District of
Oklahoma.*

